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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 193

MISSOURI PACIFIC RAILROAD COMPANY, APPELLANT,

vs.

HAL NORWOOD, ATTORNEY GENERAL OF THE STATE OF ARKANSAS; JOE JOINER, PROSECUTING ATTORNEY FOR THE THIRTEENTH CIRCUIT OF ARKANSAS, ET AL., ETC.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF ARKANSAS

FILED JUNE 9, 1930

(35,115)

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[fol. 4] [Caption omitted]

[fol. 5]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF ARKANSAS, FORT SMITH DIVISION.

No. 501. Equity

MISSOURI PACIFIC RAILROAD COMPANY, a Corporation, Plaintiff,

vs.

HAL NORWOOD, Attorney General of the State of Arkansas; Joe Joiner, Prosecuting Attorney for the Thirteenth Circuit of Arkansas, and Chester Holland, Prosecuting Attorney for the Twelfth Circuit of Arkansas, Defendants

Bill of Complaint—Filed October 19, 1929

To the Honorable Judges of the District Court of the United States in and for the Western District of Arkansas:

The plaintiff, Missouri Pacific Railroad Company, a corporation, presents this, its bill of complaint, against the defendants, Hal Norwood, Attorney General of the State of Arkansas, Joe Joiner, Prosecuting Attorney for the Thirteenth Circuit of the State of Arkansas, and Chester Holland, Prosecuting Attorney for the Twelfth Circuit of said State, and, for cause of action, complains and alleges as follows:

I

Parties

The plaintiff is a railroad corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its principal office and place of business

in the city of St. Louis, in the State of Missouri, and is a citizen and resident of that state.

The defendant, Hal Norwood, is a citizen of the State of Arkansas, and resides in the city of Little Rock, in said State, and is the duly elected, qualified and acting Attorney-General of the State of Arkansas.

[fol. 6] The defendant, Joe Joiner, is the duly elected, qualified and acting Prosecuting Attorney for the Thirteenth Circuit of the State of Arkansas, and resides in the city of El Dorado, in said State.

The defendant, Chester Holland, is the duly elected, qualified and acting Prosecuting Attorney for the Twelfth Circuit of the State of Arkansas, and resides in the city of Fort Smith, in said State.

By virtue of the laws of Arkansas, it is the duty of said defendants to enforce the provisions of the laws of said State, hereinafter specifically set forth, and to collect, by legal action in the courts of said state, the fines and penalties provided by said laws.

II

Jurisdiction

This court has jurisdiction of this action because it is a suit of a civil nature and the matter in controversy exceeds, exclusive of interest and costs, the sum or value of $3,000.00, and (1) is a suit between citizens of different states, and (2) arises under the Constitution and laws of the United States, in that plaintiff herein complains of a statute of Arkansas (Laws 1907, No. 116, page 295), prescribing the minimum number of employees to be used in the operation of freight trains and providing a penalty for violating its provisions, and the Act of February 20, 1913, of the State of Arkansas, requiring full switching crews on railroads exceeding 100 miles in length, and prescribing penalties for the violation of said Act,—both of said statutes being hereinafter referred to as the Arkansas Full Switching Crew and the Full Train Crew Laws; and plaintiff seeks relief against said statutes on the ground that both of said statutes are void because they are unlawful attempts to regulate interstate commerce and impose an undue and unreasonable burden thereon, in violation of the Commerce

Clause of the Constitution of the United States; because said statutes are in conflict with the provisions of the Interstate Commerce Act and related Acts, hereinafter more [fol. 7] specifically referred to, by which Congress occupied the same field of legislation; and because said statutes deprive the plaintiff of its property without due process of law and deny to plaintiff the equal protection of the laws, contrary to the Fourteenth Amendment to the Constitution of the United States.

III

Plaintiff an Interstate Common Carrier

Plaintiff, at all times herein mentioned, has been, and now is, a common carrier, engaged in the transportation of passengers and property in interstate commerce over its railroad, which extends from the City of St. Louis, in the State of Missouri, westerly and northwesterly through and into the states of Missouri, Kansas, Colorado and Nebraska, east into the State of Illinois, and south and southwest into and through the States of Missouri, Arkansas, Tennessee, Texas, Oklahoma and Louisiana; and petitioner, at all of said times, has been, and now is, subject to the provisions of the Act of Congress approved February 4, 1887, and Acts amendatory thereof and supplementary thereto, known as the Interstate Commerce Act.

The through freight and passenger trains operated by plaintiff between St. Louis, Missouri, Texarkana, Texas, New Orleans, Louisiana, and points in Oklahoma, are operated over plaintiff's main lines of railroad, which pass through the cities of Little Rock, Fort Smith and El Dorado in the State of Arkansas, all of which is shown on the map of plaintiff's line so operated through the State of Arkansas, attached hereto and marked "Exhibit A", and made a part hereof.

Said map shows the divisions and operating districts and principal stations on that portion of plaintiff's main line between St. Louis, Missouri, Texarkana, Texas, the city of New Orleans, in the State of Louisiana, and the different stations reached by plaintiff's line extending into the State of Oklahoma.

Subsequently all of the freight and passenger traffic transported on that part of plaintiff's line between St. Louis, Missouri, New Orleans, Louisiana, Texarkana, Texas, and points in Oklahoma, is interstate traffic; and [fol. 8] the greatest part of said traffic either originates in the State of Missouri or at points east, north and west thereof, and is destined to points south and southwest of the State of Arkansas, all of such traffic being interstate.

At the cities of Little Rock, Texarkana, Van Buren and El Dorado, terminals are located on the plaintiff's line, and the facilities thereat are suitable and convenient for carrying on plaintiff's interstate railroad business, and at all of said terminals, the freight, passenger and switching crews and engines are changed and trains are inspected. Said terminals represents large investments, and most of said terminals were established long before the Arkansas Full Switching Crew and Full Train Crew Laws were enacted.

IV

State Laws Complained of

The Acts of the Legislature of the State of Arkansas, Laws of Arkansas, 1907, No. 116, and the Act of February 20, 1913, (Sections 8583 and 8586, Crawford & Moses Digest, State of Arkansas, 1921) read as follows:

"Section 1. No railroad company or officer of court owning or operating any line or lines of railroad in this State and engaged in the transportation of freight over its line or lines shall equip any of its said freight trains with a crew consisting of less than an engineer, a fireman, a conductor, and three brakemen, regardless of any modern equipment of automatic couplers and air brakes, except as hereinafter provided.

"Section 2. This act shall not apply to any railroad company or officer of court whose line or lines are less than fifty miles in length, nor to any railroad in this state, regardless of the length of said lines, where said freight train so operated shall consist of less than twenty-five cars, it being the purpose of this act to require all railroads in this state whose line or lines are over fifty miles in length

engaged in hauling a freight train consisting of twenty-five cars or more, to equip the same with a crew consisting of not less than an engineer, a fireman, a conductor, and three brakemen, but nothing in this act shall be construed so as to prevent any railroad company or officer of court from adding to or increasing its crew beyond the number set out in this act.

"Section 3. Any railroad company or officer of court violating any of the provisions of this act shall be fined for each offense not less than one hundred dollars nor more than five hundred dollars, and each freight train so illegally run shall constitute a separate offense. Provided, the penalties of this act shall not apply during strikes of men in train service of lines involved." Ark. Laws, 1907, No. 116.

[fol. 9] An act of the State of Arkansas, entitled "An Act for the better protection and safety of the public," provides as follows:

"Section 1. That no railroad company or corporation owning or operating any yards or terminals in the cities within this state, where switching, pushing or transferring of cars are made across public crossings within the city limits of the cities, shall operate their switch crews with less than one engineer, a fireman, a foreman and three helpers.

"Section 2. It being the purpose of this act to require all railroad companies or corporations who operate any yards or terminals within this state who do switching, pushing or transferring of cars across public crossings within the city limits of the cities to operate said switch crew or crews with not less than one engineer, a fireman, a foreman and three helpers, but nothing in this act shall be construed so as to prevent any railroad company or corporation from adding to or increasing their switch crew or crews beyond the number set out in this act.

"Section 3. The provisions of this act shall only apply to cities of the first and second class, and shall not apply to railroad companies or corporations operating railroads less than one hundred miles in length.

"Section 4. Any railroad company or corporation violating the provisions of this act shall be fined for each separate offense not less than fifty dollars, and each crew so illegally operated shall constitute a separate offense."

V

The Extra Switchmen and Extra Brakemen Provided by the Arkansas Laws are Not Used in Standard Railroad Practice

Plaintiff respectfully presents to the court that railroad operating conditions on the lines of the plaintiff railroad in the State of Arkansas and elsewhere, and on railroads throughout the United States, generally differ from operating conditions which existed in 1907 and 1913, when the Arkansas Full Switching Crew and Full Train Crew Laws were passed, in that additions and betterments have been made to road and equipment in the way of improving and making stronger and more secure the rails, roadbeds, and bridges, reducing grades, procuring heavier, stronger and safer engines and cars, and safer power, so that today freight trains and passenger trains containing many more cars than those which could be safely operated when said laws were enacted can now be operated in Arkansas and throughout the United States generally much more safely than smaller trains could then be operated.

[fol. 10] Said additions and betterments, costing many billions of dollars, have been made by the railroad of the United States and by the plaintiff herein for the express purpose of enabling common carriers by railroad to increase their operating efficiency, economy, and safety in the running of longer and heavier freight and passenger trains.

It is the standard practice of the railroads of the United States, and the standard practice of the plaintiff, wherever the density of traffic is sufficient, except in the State of Arkansas, to operate freight and passenger trains and switch engines with crews consisting of less than the extra switchmen and extra br-kemen provided by the Arkansas laws. Said trains and said switch engines are commonly, safely and economically operated through the United States and over lines of railroad substantially the same as pl-in-

tiff's lines of railroad extending into and through the State of Arkansas, and except in the State of Arkansas, where said laws require said extra switchmen and extra brakemen, engines, trains and crews are operated, wherever the traffic and circumst-nces make such operation advisable, without such extra switchmen and extra br-kemen. There is no reason, from the standpoint of safety or from any other standpoint, why said extra switchmen and extra brakemen should be employed upon switch engines and freight trains oper-ted into and through the state of Arkansas.

By reason of said expenditures for roadbed and equipment, and by increasing the length of freight and passenger trains and by consolidation of through freight traffic at origin terminals into trains which run through to terminals as far distant as the circumstances will permit without being broken up, the plaintiff and the other railroads into st-tes other than Arkansas, where such extra brakemen and extra switchmen are not required, have been able to effect great economies; but the laws of Arkansas, above set forth, have prevented and now precent the plaintiff from effecting such economies while operating its tr-ins and engines into and through the state of Arkansas.

VI

[fol. 11] General Effect of the Arkansas Laws on Switching Movements and Freight Train Operations

Because of said full switching crew and full train crew laws of the State of Arkansas, the plaintiff is not able to operate its switch engines economically, inasmuch as it is compelled to employ an extra switchman at all terminal points where switch engines are employed, when said extra switchman is wholly unnecessary for the service rendered by the plaintiff.

Because of the law of Arkansas requiring an extra brakeman upon the plaintiff's freight trains, plaintiff is compelled to employ an extra brakeman in addition to the standard crew required in the operation of its through and local freight trains, and said extra brakeman, being wholly unnecessary in the operation of said trains, customarily

leaves said train when the Arkansas state line is reached, and said extra brakeman then customarily deadheads back to the nearest division point on street car, bus or train, and the plaintiff is required to pay said extra brakeman for full time, although very little of said brakeman's time is employed in the actual operation of the plaintiff's trains.

The plaintiff's standard agreement with its employes, entered into between plaintiff and representatives of the Brotherhood of Railroad Trainmen, provides for a standard switching crew, in all states through which the plaintiff operates, of a foreman and two helpers, and the standard agreement entered into between the plaintiff and the said representatives of the Brotherhood of Railroad Trainmen also provides for a standard freight train crew, in through and irregular freight service, of a conductor and two brakemen. And this is the standard crew engaged generally upon all the railroads of the United States in switching and freight train service, and all the different railroads in the United States have similar agreements governing the switching and freight train service with the representatives of the National Brotherhood of Railroad Trainmen, with the exception of the service in states with laws similar to the above laws of the State of Arkansas.

[fol. 12] It is plaintiff's constitutional right, and the Interstate Commerce Act makes it plaintiff's duty, to manage and operate its railroad efficiently and economically, but by reason of said laws of the State of Arkansas, plaintiff is prevented from operating its railroad efficiently and economically.

VII

Savings Which Could be Accomplished by Operation of Switch Engines and Trains Without Extra Switchmen and Brakemen

The savings which would result to the plaintiff from the operation of switch engines and freight trains into and through the State of Arkansas without the employment of such extra and superfluous switchmen and extra brakemen provided by the laws of Arkansas, annually amount to many thousands of dollars, all of which plaintiff is use-

lessly required to expend in order to comply with said extra switchmen and extra brakemen laws.

The amounts hereinafter recited, by which switching movements and direct train expenses, including locomotive maintenance, fuel and other locomotive supplies and engine-house expenses, and wages of trainmen and enginemen, would be reduced if the plaintiff were not compelled to comply with said Full Switching and Extra Train Crew laws of the State of Arkansas, are derived from a careful and exhaustive investigation and study of plaintiff's statistics, accounts, equipment, plant, traffic and operating conditions, by persons competent and skilled in such matters, and plaintiff states that such amounts and savings are true and correct, and, if plaintiff were permitted to operate its switch engines and freight trains into and through the State of Arkansas without being compelled to comply with said extra switchman and extra brakeman laws, a saving in its operating expenses of many hundreds of thousands of dollars annually could be accomplished.

Such operation of switch engines at different terminals in the State of Arkansas would enable the plaintiff to reduce its switching expenses at least $250,000.00, annually, and dispensing with the services of extra brakemen upon its freight trains required by the laws of the State of Arkansas [fol. 13] would also amount in a reduction of direct train expenses in at least the sum of $350,000.00, annually. But for said laws of Arkansas, plaintiff could immediately put into effect a standard system of operation of switch engines and freight trains with standard crews containing one less switchman and one less brakeman than required by said laws of the State of Arkansas, thus effecting a total annual economy in the operation of switch engines and freight trains in the State of Arkansas of $600,000.00.

VIII

Conflict with Commerce Clause and Fourteenth Amendment to the Constitution of the United States

Plaintiff respectfully presents to the court that the Arkansas Full Switching Crew Law and Extra Brakeman Law are void because:

(a) The number of switchmen and the number of brakemen which the plaintiff and the other railroads of the State

of Arkansas shall employ upon their railroads, which are operated into and through the said State of Arkansas and through a number of other states in interstate commerce, from the very nature of the case, are not a lawful subject of regulation by the said State of Arkansas, but is a subject within the exclusive legislative jurisdiction of Congress; and the said statutes of the St-te of Arkansas requiring extra switchmen and extra brakemen upon the interstate railroads operating into and through the said State of Arkansas were and are outside the legislative field of the State of Arkansas as limited by Section 8, Article 1, known as the Commerce Clause of the Constitution of the United States.

(b) Said statutes also impose undue and unreasonable burdens on interstate commerce, in violation of the said Commerce Clause of the Constitution of the United States.

(c) Said statutes are also unreasonable and arbitrary; they bear no real or substantial relation to their ostensible purpose to add to the safety of switching or train operations, and they prevent plaintiff from using, operating and managing its engines and lines of railroad and its railroad facilities situated in the St-te of Arkansas in a reasonable and lawful manner, and prevent plaintiff from [fol. 14] enjoying the benefits -nd advantages which would accrue to plaintiff from standard safe and economical operations, all as hereinabove shown.

(d) Said laws of the State of Arkansas in no way provide whereby the validity of said statutes may be tested except by violating the same and awaiting suits for penalties which would ensue, and at the risk of having to pay such penalties; and said statutes therefore deprive plaintiff of its property and deny to it the equal protection of the laws contrary to the Fourteenth Amendment to the Constitution of the United States.

IX

Penalties Assessed Against Plaintiff

Heretofore, the defendants, Joe Joiner, Prosecuting Attorney for the 13th Circuit of the State of Arkansas, and

Chester Holland, Prosecuting Attorney for the 12th Judicial Circuit of said State, acting upon the advice, and under the instructions, of the defendant, Hal Norwood, Attorney-General of the State of Arkansas, have caused to be instituted against plaintiff, in the Justices' Courts of El Dorado, Arkansas, and at Fort Smith, Arkansas, different suits for penalties for failure to employ the extra brakeman required by said laws of Arkansas and many several suits for failure to employ the extra switchman provided by said laws.

Defendant, in its answers to said suits, has set up the invalidity of the laws and pleaded the unconstitutionality thereof, but the said Justices of the Peace, before whom said cases were pending, assessed penalties against the defendant (plaintiff in this cause), for failure to comply with said laws, and unless restrained, the defendants insist upon enforcing said void and unconstitutional acts and threaten to, and will, bring other suits to collect said penalties from the plaintiff (in this cause) upon said void and unconstitutional statutes, in these and other cases.

X

The Statutes of Arkansas are in Conflict with the General Scheme of Federal Regulation

Plaintiff further respectfully shows to the court that the Arkansas statutes, above set forth, are void because they [fol. 15] require the employment of a greater number of switchmen and brakemen in the operating of switch engines and freight trains engaged in interstate commerce than are necessary.

The varying views of state legislatures and state commissions would defeat the general and comprehensive scheme of federal regulation prescribed by (a) the Interstate Commerce Act, as amended by the Transportation Act of 1920, and (b) by the Railroad Labor Act of 1926.

XI

Conflict with Interstate Commerce Act, as Amended

Section 13 of the Act to Regulate Commerce, as amended February 28, 1920, gives the Interstate Commerce Commission complete jurisdiction to prescribe "the rate, fare,

charge, classification, regulation, or practice", which must be adopted and put into effect by interstate carriers, and the Interstate Commerce Commission is given authority by Congress, after hearing, to fix and determine "any such rate, fare, charge, classification, regulation, or practice which may cause any undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, and to prescribe the rate, fare, charge, classification, regulation, or practice thereafter to be observed in such manner as, in its judgment, will remove such advantage, preference, prejudice or discrimination, * * * the law of any state or the decision or order of any state authority to the contrary notwithstanding."

This section of the Transportation Act, which was not in existence when the constitutionality of the Arkansas Full Switching Law and Extra Brakeman Act were passed upon by the Supreme Court of the United States, clearly shows that Congress, since those decisions, has occupied the field, thus nullifying the state power upon this subject.

[fol. 16] By Section 15 of the Act to Regulate Commerce, as amended February 28, 1920, the Interstate Commerce Commission is given complete authority to determine rates, classifications, regulations, and practices, and the Commission is given authority to prescribe what will be "a just and reasonable rate, fare, — charge thereafter to be observed", and what "individual or joint classification, regulation or practice is or will be just, fair and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist * * * and the carriers shall adopt the classification and shall conform to and observe the regulation or practice so prescribed."

The Interstate Commerce Commission, by Section 15, paragraph 6, in prescribing the rates and practices to be followed by interstate carriers, is directed by Congress as follows:

"In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give

due consideration, among other things, to the efficiency with which the carriers concerned are operating, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers, and also whether any particular participating carrier is an originating, intermediate, or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier to the joint rate, fare, or charge."

Section 15 (a), paragraph 2, further provides as follows:

"In the exercise of its power to prescribe just and reasonable rates, the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole, or as a whole in each of such rate groups, will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structure and equipment, earn an aggregate net annual operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property", etc.

By these sections, the Commission is given authority, not only to fix the rates so as to provide a reasonable return upon the property, but also to regulate the expenditures consistent with proper, efficient operation and economical management. If the Interstate Commerce Commission has authority to prescribe the rates and to regulate the expenditures, then the State of Arkansas, or any [fol. 17] other individual state, cannot uselessly require, under the guise of the police power, an annual expenditure by the carriers of this State of the sum of $1,000,000.00, which is not required by any other of the eight states through which the petitioner operates, for compliance with the so-called Full Crew Laws.

XII

Conflict with Railroad Labor Act

Congress has also legislated upon the complete subject of railway labor by providing for a Board of Mediation

and an Emergency Board, if necessary, to consider, and act upon, all disputes and issued between railroad employees and the common carriers of this country, that they do not settle themselves.

The Railroad Labor Act of 1926, provides that it shall be the duty of all carriers, their officers, agents and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes. Conferences are provided for "in case of dispute between a carrier and its employes arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions."

Congress, by the Railroad Labor Act, has given the United States Board of Mediation jurisdiction to consider and act upon any and all disputes, and not only to consider reasonable rules and working conditions, but also, when arbitration is had, the decision of the arbitrators, as to proper "working conditions" between railroad employes and common carriers, is binding between both parties.

Plaintiff avers that by said Railroad Labor Act Congress intended to leave the railroad common carriers of the United States and their employes free to handle questions pertaining to rules and working conditions, as in said Railroad Labor Act provided, and intended that if they agreed to arbitrate under said Act any controversies or disputes with respect to rules and working conditions, the judgment of the arbitrators should not be limited in any way other than by Federal statutes, and intended that any judgments or awards entered pursuant to provisions of said act [fol. 18] should not be affected or disturbed in any way by any state statute or any order of any state administrative body theretofore or thereafter passed or entered. The Arkansas extra switchman act and extra brakeman law is therefore void because in conflict and inconsistent with the said United States Railroad Labor Act of 1926.

XIII

Equity Jurisdiction

Plaintiff further avers that it is the duty of defendants to prosecute all violations of said Arkansas Extra Switch-

men Law and the Arkansas Extra Brakemen Act unless restrained from so doing, and as heretofore set out, the State of Arkansas is now contending, by penalty suits instituted against the plaintiff, that plaintiff has violated the law in employing less than the number of switchmen required by the Arkansas Extra Switchmen Act, and that it has also violated the law in employing less than the number of brakemen required by the Arkansas Extra Brakemen Act, and that said state is now seeking to recover fines and penalties, all as provided for by said laws, and unless restrained and enjoined as hereinafter prayed, the defendants will continue to prosecute said actions against the plaintiff and will institute numerous other prosecutions for penalties under said laws.

The damage and injury which plaintiff daily sustains by reason of said statutes as above set forth is great and irreparable, and by reason of the provisions of said laws, the plaintiff cannot safely disregard the same and await prosecutions thereunder for the purpose of testing the validity thereof because of the enormous penalties which might accrue, and furthermore, because of the narrow scope of the evidence and the procedural difficulties which would be encountered in suits at law, the complicated facts of railroad operation and accounting involved in this suit cannot be ascertained and determined in an adequate, proper and orderly manner except in a suit in equity.

[fol. 19]

XIV

Prayer

Wherefore, inasmuch as it is without adequate remedy at law for its protection, plaintiff prays:

(1) That it be ordered, adjudged and decreed by the court that the said Arkansas Extra Switchman Law and the said Arkansas Extra Brakemen Law are null and void for the reasons hereinabove set forth.

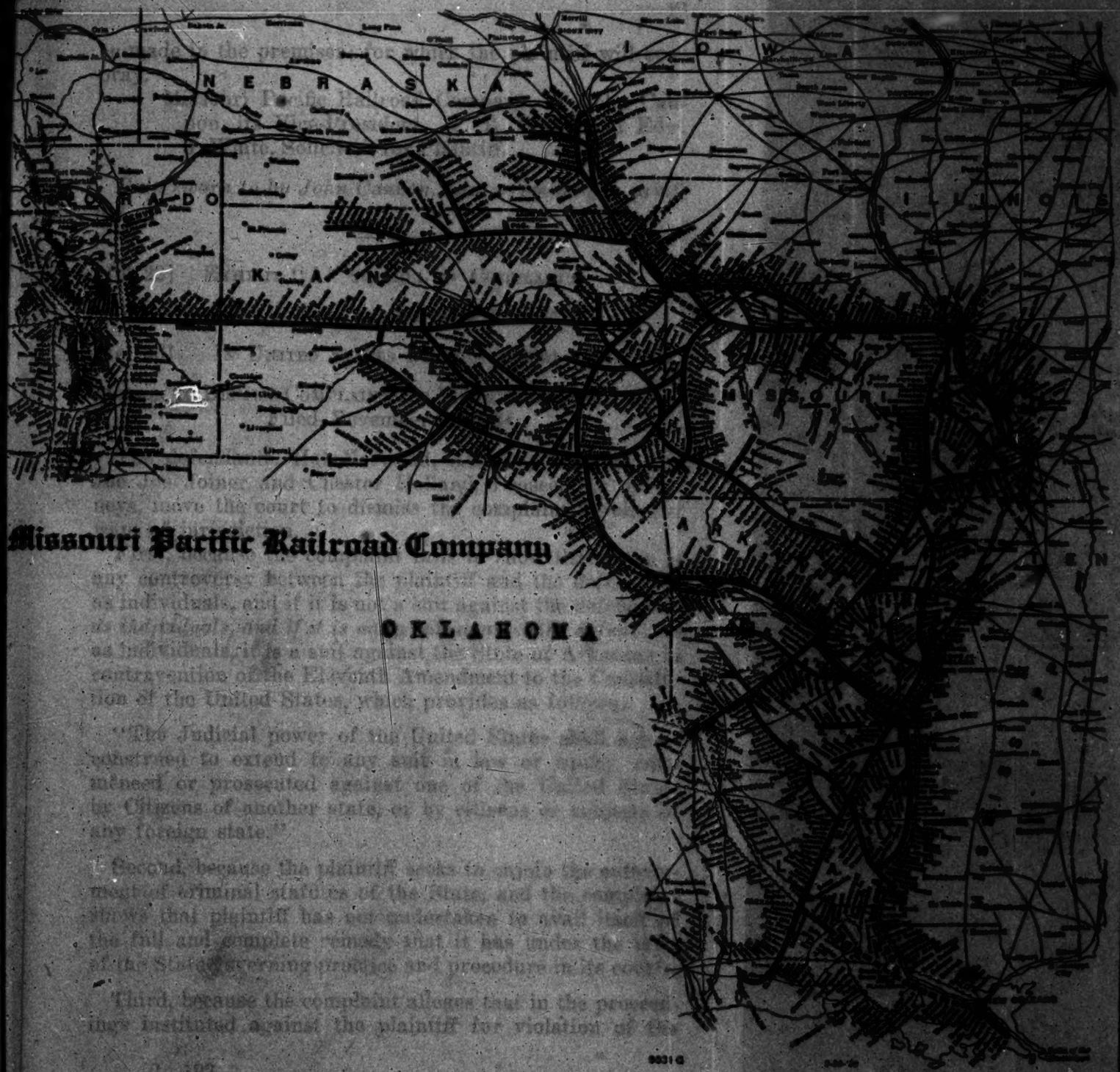
(2) That it be ordered, adjudged and decreed that the defendants, and all persons acting under their direction, be perpetually enjoined from enforcing or attempting to enforce, or from advising, instituting, prosecuting or aiding in any action, suit or proceeding of any kind or character

to recover from or impose upon, or enforce against plaintiff or any of its officers, agents, or employees, or any of them, any penalty or damages for failure or refusal to obey, observe or comply with the provisions of said Arkansas Extra Switchmen Law or said Arkansas Extra Brakemen Law, or from interfering with or attempting to interfere with, or from advising, instituting, prosecuting or aiding in any act, action, suit or proceeding to interfere with, restrain or prevent plaintiff, its officers, agents or employes, or any of them, from operating its switch engines and freight trains within the State of Arkansas without complying with said Extra Switchmen and Extra Brakeman Laws.

(3) That plaintiff have a temporary or interlocutory injunction against defendants restraining them, and all persons acting under their direction, from proceeding to enforce said statutes, and from in any way doing any act or thing which will prevent the operation by plaintiff of its switch engines and freight trains in violation of said Arkansas Full Switching Crew and Extra Brakeman Laws, pending the hearing of this cause, and until the further order of this court.

(4) That the plaintiff may have such other and further or different relief as may be equitable and proper to fully protect its rights in the premises and as to the Court may seem meet and proper.

[fols. 20 & 21] And may it please your Honors to grant unto plaintiff, not only a writ of injunction, conformable to the prayer of this bill, but also that a writ of subpoena of the United States of America issue out of and under the seal of this Honorable Court, directed to the defendants, Hal Norwood, Attorney General of the State of Arkansas, Joe Joiner, Prosecuting Attorney for the 13th Judicial Circuit of the State of Arkansas, and Chester Holland, Prosecuting Attorney for the 12th Judicial Circuit of said State, commanding them, on a day certain, therein named, to be and appear before this Honorable Court, then and there to answer, but not under oath (answer under oath being hereby expressly waived), all and singular the premises, and to perform and abide by such order and decree as may


NEBRASKA
IOWA
ILLINOIS
KANSAS
OKLAHOMA
Missouri Pacific Railroad Company

be made in the premises; for which the plaintiff will ever pray.

Missouri Pacific Railroad Company, by John Cannon, its Vice-President. T. B. Pryor and Edw. J. White, Solicitors for Plaintiff.

Duly sworn to by John Cannon. Jurat omitted in printing.

[fol. 22] EXHIBIT "A" TO BILL OF COMPLAINT

(Here follows exhibit, side folio 22)

[fol. 23] IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS COMPLAINT FOR WANT OF JURISDICTION.—Filed November 4, 1929

The defendants, Hal Norwood, Attorney General, and Joe Joe Joiner and Chester Holland, Prosecuting Attorneys, move the court to dismiss the complaint herein for want of jurisdiction.

First, because the complaint fails to show that there is any controversy between the plaintiff and the defendants as individuals, and if it is not a suit against the defendants *as individuals, and if it is not a suit against the defendants* as individuals, it is a suit against the State of Arkansas in contravention of the Eleventh Amendment to the Constitution of the United States, which provides as follows:

"The Judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another state, or by citizens or subjects of any foreign state."

Second, because the plaintiff seeks to enjoin the enforcement of criminal statutes of the State, and the complaint shows that plaintiff has not undertaken to avail itself of the full and complete remedy that it has under the laws of the State governing practice and procedure in its courts.

Third, because the complaint alleges that in the proceedings instituted against the plaintiff for violation of the

laws that it pled their unconstitutionality, but that the Justices of the Peace before whom the case was pending assessed penalties against the plaintiff. Therefore, it appears that the plaintiff has not availed itself of the right of appeal to the Circuit Court and if necessary to the Supreme Court of the State, and then to the Supreme Court of the United States, and plaintiff has no right to invoke the jurisdiction of a federal court for the purpose of annulling the laws of a state because it was not able to convince a justice of the peace that its view of the Constitution was correct.

Fourth, because while the complaint alleges that Con- [fol. 24] gress has occupied the field covered by the statutes sought to be annulled, and section of the Act to regulate commerce, upon which plaintiff relies, and which is copied in the complaint, does not show that Congress has authorized the Interstate Commerce Commission to designate the number of railroad employees that shall constitute train crews or switching crews.

Fifth, because it is not shown or alleged that the Interstate Commerce Commission has adopted any rule or made any order designating the number of employees that shall constitute a train crew or a switching crew.

Sixth, because Congress has not occupied the field covered by the statutes involved, and the State's power has not been nullified upon these subjects.

Seventh, because the complaint shows that the Full Train Crew Act has been in force twenty-two (22) years, and the Full Switching Crew Act sixteen (16) years, and that the plaintiff has during that time successfully operated its railroads, and has spent large sums for additions and betterments. Therefore, it appears from the complaint that the enforcement of the aforesaid laws will not cause plaintiff any immediate and irreparable injury.

Eighth, because the Supreme Court of the United States, in the case of Chicago R. I. & P. R. Co. v. Arkansas, (219 U. S. 453) held that the Full Train Crew law is constitutional, and that it was properly an act of legislation within the scope of the admitted powers reserved to the state, and that its effects on transactions of commerce among the

states is only indirect; incidental and remote, and not such as to burden or impede such commerce.

Ninth, because the Supreme Court of the United States, in the case of St. Louis, I. M. & S. R. Co. v. State of Arkansas, (240 U. S. 518) declared that the Full Switching Crew law is not an unconstitutional interference with Interstate Commerce, and is not repugnant to the Fourteenth Amendment to the Constitution of the United States on the theory that it prevents a contest of its validity by the excess of its penalties.

Tenth, because the questions raised by the complaint [fol. 25] have been finally adjudicated by the Supreme Court of the United States, and issues decided against the contention of the plaintiff.

Wherefore, the premises considered, defendants pray that the complaint herein be dismissed for want of equity.

Hal L. Norwood, Attorney General of the State of Arkansas; Joe Joiner, Prosecuting Attorney for the Thirteenth Circuit of Arkansas, and Chester Holland, Prosecuting Attorney for the Twelfth Circuit of Arkansas; W. D. Jackson, Special Counsel, Attorneys for Defendants.

[fol. 26] IN UNITED STATES DISTRICT COURT

In Equity. No. 501

[Title omitted]

AFFIDAVIT OF JAMES H. AMOS—Filed Nov. 18, 1929

STATE OF MISSOURI,
City of St. Louis, ss:

James H. Amos, being first duly sworn, deposes and says that he is, and for the past eight years has been, the claims attorney for the Missouri Pacific Railroad Company, with headquarters at St. Louis, Missouri, and that he makes this affidavit for use in the suit to test the validity and restrain the enforcement of the statutes of Arkansas, commonly known as the Full Crew Switching Law and Extra Brakeman Law, which prohibit, under penalty, the operation of switch engines and freight trains in the State of

Arkansas without the employment of an extra switchman and an extra brakeman on freight trains, and further affiant says:

[fol. 27] Qualifications

That he has had twenty-nine years experience in the claim department of the Missouri Pacific Railroad Company, having been claim agent, district claim agent, assistant claims attorney and claims attorney for said company and its subsidiary lines.

As assistant claims attorney and claims attorney for said road it has been his duty generally to investigate and supervise settlements for personal injuries of passengers, employes and third parties injured as the result of the operation of railroad trains on the lines of said company.

Affiant's duties also required him to make various economic investigations and studies of the causes and means of eliminating accidents and personal injuries to passengers and employes, and he is personally familiar with the effect of the operation of the Arkansas Full Crew Switching Law and the Extra Brakeman Law of said state as affecting the hazards of railway service, and whether such acts tend to minimize or increase the casualties in the operation of railroads of said state.

For the purpose of ascertaining whether there is any reason or basis for the claim sometimes made that freight trains and yard-switching crews should, for safety reasons, be manned by three brakemen and three switchmen, affiant, after giving the matter careful study, came to the conclusion that the correctness or incorrectness of that claim could best be demonstrated by comparing the number of accidents resulting in personal injuries and deaths to employes in freight-train service for the year 1928 in the States of Arkansas and Missouri.

[fol. 28] During the year 1928 your affiant was employed as claims attorney for the Missouri Pacific Railroad Company, and in that capacity it was his duty to keep certain records of personal injuries and death of trainmen and enginemen occurring in Arkansas and Missouri in the service of the Missouri Pacific Railroad Company, and that he did keep such records, showing all injuries and deaths (reportable to the Interstate Commerce Commission) of employes arising in freight train and in yard service, and that

he has compiled from his said records the facts and figures in the aggregate, showing by classes the injuries and deaths of all such employes, for each of the states, as appears next following:

Table No. I

Reportable Personal Injuries—Freight-Train Service—Year 1928

Class	State of Arkansas, number of injured or killed	State of Missouri, number of injured or killed
Enginemen—		
Killed	1	0
Injured	16	23
Trainmen—		
Killed	3	1
Injured	91	67
Total	111	91
Freight train miles	4,280,202	4,232,011
Injuries per freight-train mile	.000026	.000021

[fol. 29]

Table No. II

Reportable Personal Injuries—Yard Service Employes—Year 1928

Class	State of Arkansas, number of injured or killed	State of Missouri, number of injured or killed
Enginemen—		
Killed	0	1
Injured	10	21
Yardmen—		
Killed	2	2
Injured	64	84
Total	76	108
Number of cars handled in yards during year	4,832,376	6,607,616
Injuries per car handled	.000016	.000016

The number of injuries per freight-train mile is greater in Arkansas than in Missouri by .0005 of one per cent, and

the aggregate freight-train mile for the period is greater in Arkansas than in Missouri by 1.11 per cent.

In yard service for this period there were 36.8 per cent more cars handled in Missouri than in Arkansas.

Economic comparisons appear in the tables next following, showing the aggregate amounts paid for injuries and deaths set out in tables No. I and No. II.

[fol. 30] Table No. III

Amount Paid for Injuries and Deaths Occurring During the Year 1928 to Freight Train Service Employes

Class	State of Arkansas, amount paid	State of Missouri, amount paid
Enginemen—		
Deaths	$9,003.50	
Injuries	8,095.00	$17,629.00
Yardmen—		
Deaths	12,267.00	7,000.00
Injuries	25,578.50	37,890.30
Total	$54,944.00	$62,519.30
Freight train miles	4,280,202	4,232,011
Amount paid per train mile	.013	.015

Table No. IV

Amount Paid for Injuries and Deaths Occurring During the Year 1928 to Yard Service Employes

Class	State of Arkansas, amount paid	State of Missouri, amount paid
Enginemen—		
Deaths		$10,000.00
Injuries	$4,490.00	1,576.50
Yardmen—		
Deaths	9,052.00	11,774.50
Injuries	48,476.50	15,999.13
Total	$62,018.50	$39,350.13
Number of cars handled in yards during year	4,832,376	6,607,616
Amount paid per car handled	.013	.006

[fol. 31] The amount paid for each train mile in Arkansas in 1928 was $0.0128, and the amount paid in Missouri was $0.0148, it being more in Missouri by $0.002 for each train mile.

In yard service there was paid $0.01283 for each car handled in Arkansas during 1928, and in Missouri $0.005955 for each car; the rate being 57.6 per cent greater in Arkansas than in Missouri.

As a further means of camparison a statement has been compiled of accidents resulting in deaths and personal injuries as reported to the Interstate Commerce Commission covering the period from 1924 to 1928, inclusive, by states, as shown by table No. V.

[fol. 32]

Table No. V

Injuries Reported to the I. C. C. in Train and Yard Service Accidents

State	Year	Employes: Road trainmen: Passgr. service No.	Employes: Road trainmen: Freight service No.	Employes: Yardmen No.	Employes: Others No.	Passengers: Passgr. trains	Passengers: Frt. trains	Outsiders: Passgr. trains	Outsiders: Frt. trains	Tresspassers: Passgr. trains	Tresspassers: Frt. trains	Totals
	1924	29	161	135	41	215	8	49	62	26	63	789
	1925	17	171	169	58	80	9	40	45	12	49	650
Ark.	1926	25	142	116	38	89	25	47	60	15	43	600
	1927	14	142	107	41	46	20	43	43	25	63	533
	1928	7	111	76	25	59	13	47	34	14	47	433
												3005
	1924	25	145	123	48	111	9	39	41	18	53	612
	1925	20	126	138	42	50	9	42	49	20	49	545
Mo.	1926	28	139	117	45	33	9	28	63	17	52	531
	1927	22	148	118	36	34	4	40	32	20	47	501
	1928	16	91	108	52	20	3	15	41	17	40	403
												2592

[fol. 33]

	1924	16	104	58	19	22	7	20	43	7	44	340
	1925	9	107	51	18	33	0	24	18	2	30	292
Kans.	1926	8	92	52	26	21	9	15	22	3	14	262
	1927	8	76	32	13	38	3	17	25	5	29	246
	1928	9	69	31	17	22	3	57	20	1	17	246
												1386
	1924	2	27	53	9	10	5	0	1	1	6	114
	1925	0	18	57	3	3	1	6	7	1	7	103
Ill.	1926	1	27	70	5	1	1	1	6	0	9	121
	1927	0	36	29	0	1	4	1	3	0	6	80
	1928	3	22	25	4	1	0	4	0	1	6	66
												484
	1924	2	66	34	19	15	3	8	11	3	12	173
	1925	6	109	39	11	1	0	7	9	1	17	200
La.	1926	2	57	30	6	3	1	9	13	3	15	139
	1927	7	50	35	10	2	1	9	13	4	11	142
	1928	8	21	26	6	2	0	13	8	4	11	99
												753

Table No. V—Continued

State	Year	Employes: Road trainmen: Passgr. service No.	Employes: Road trainmen: Freight service No.	Employes: Yardmen No.	Employes: Others No.	Passengers: Passgr. trains	Passengers: Frt. trains	Outsiders: Passgr. trains	Outsiders: Frt. trains	Tresspassers: Passgr. trains	Tresspassers: Frt. trains	Totals
[fol. 34]	1924	2	9	26	1	1	0	7	2	1	11	60
	1925	3	14	15	3	7	1	1	10	1	6	61
Nebr.	1926	1	7	10	2	3	0	2	3	0	6	34
	1927	1	8	3	1	2	0	3	6	2	2	28
	1928	1	3	9	2	2	0	4	6	1	2	30
												213
	1924	1	8	5	1	0	0	0	0	0	0	15
	1925	1	6	4	2	0	0	0	0	0	1	14
Colo.	1926	1	7	2	2	0	0	1	1	0	0	14
	1927	0	7	5	1	0	0	2	2	0	0	17
	1928	0	5	0	0	1	0	1	2	0	1	10
												70
	1924	2	13	0	0	2	1	0	4	4	7	33
	1925	0	17	0	0	2	0	1	0	0	4	24
Okla.	1926	1	17	1	2	1	0	2	7	2	5	38
	1927	0	17	0	3	1	1	1	5	3	3	34
	1928	0	2	0	6	10	1	0	3	1	3	26
												155

[fol. 35] Table No. VI, as deduced from table No. V, shows decrease in injuries and deaths to employes arising out of train and yard service accidents in other states, and per cent of decrease, as compared with Arkansas, for five years; and table No. 7 shows decreases in all classes of injuries and deaths arising out of train and yard service accidents in other states, and per cent of decrease, as compared with Arkansas, for five years.

Table No. VI

Decrease in Number of Injuries and Deaths to Employes in Other States as Compared with Arkansas, 1924 to 1928, Inclusive, and per cent.

State	Decrease in number of injuries	Per cent
Missouri	38	.02
Kansas	810	.49
Illinois	1234	.75
Louisiana	1081	.66
Nebraska	1504	.92
Colorado	1567	.96
Oklahoma	1544	.95

[fol. 36] Table No. VII

Decrease in Number of Injuries and Deaths to All Classes of Persons in Other States as Compared with Arkansas, 1924 to 1928, Inclusive, and per Cent.

State	Decrease in number of injuries	Per cent
Missouri	413	.13
Kansas	1619	.53
Illinois	2521	.83
Louisiana	2242	.74
Nebraska	2792	.92
Colorado	2935	.97
Oklahoma	2840	.94

Taking all accidents arising out of train and yard service, including injuries sustained by employes in train and yard service, passengers, outsiders and trespassers, by states, for five years, from 1924 to 1928, inclusive, table No. VIII has been compiled as a basis of comparison of injuries reported to the Interstate Commerce Commission based on the per cent of injuries to the 100,000 train miles and per 100,000 car miles.

[fol. 37]

Table No. VIII

Injuries to All Classes of Persons Reported to the I. C. C. in Train and Yard Service Accidents and per Cent per 100,000 Train Miles and 100,000 Car Miles

State	Year	Number of injuries	Total train-miles	Per cent per 100,000 train-miles	Total car-miles	Per cent per 100,000 car-miles
Arkansas	1924	789	8,294,127	.09513	195,594,570	.00403
	1925	650	8,711,594	.07461	226,578,796	.00287
	1926	600	8,790,025	.06826	234,507,204	.00256
	1927	533	7,543,410	.07066	200,456,923	.00266
	1928	433	8,567,831	.05054	233,310,558	.00186
Total		3,005	41,906,987	.07176	1,090,448,051	.00276
Missouri	1924	612	7,465,681	.08198	173,146,498	.00353
	1925	545	7,722,637	.07057	188,894,354	.00289
	1926	531	7,849,943	.06764	205,382,656	.00259
	1927	501	7,913,092	.06331	212,272,751	.00236
	1928	403	7,642,294	.05273	225,125,314	.00179
Total		2,592	38,593,647	.06716	1,004,821,573	.00258

[fol. 38]

	1924	340	6,813,852	.04990	149,530,763	.00227
	1925	292	6,574,092	.04442	154,734,619	00189
Kansas	1926	262	6,692,712	.03915	168,452,468	00156
	1927	246	6,787,641	.03624	172,856,257	.00142
	1928	246	6,881,959	.03575	185,640,789	.00133
Total		1,386	33,750,256	.04107	831,214,896	.00167
	1924	114	1,005,894	.11332	51,321,066	.00222
	1925	103	974,909	.10564	55,979,392	.00184
Illinois	1926	121	1,128,777	.10720	67,764,974	00179
	1927	80	944,709	08468	56,500,748	00142
	1928	66	1,150,585	.05736	66,377,426	00099
Total		484	5,204,874	09299	297,943,606	.00162
	1924	173	2,102,972	08226	54,135,279	.00320
	1925	200	2,790,950	.07166	78,757,454	00254
Louisiana	1926	139	2,651,117	05243	72,829,965	.00191
	1927	142	2,178,909	.06517	57,914,741	.00245
	1928	99	2,165,913	.04571	59,395,111	.00167
Total		753	11,889,861	.06333	323,032,550	00233

Table No. VIII—Continued

State	Year	Number of injuries	Total train-miles	Per cent per 100,000 train-miles	Total car-miles	Per cent per 100,000 car-miles
[fol. 39]						
	1924	60	964,754	.06219	19,552,798	.00307
	1925	61	955,710	.06383	20,616,043	.00296
Nebraska	1926	34	958,660	.03547	22,045,606	.00154
	1927	28	1,027,261	.02726	21,429,794	.00131
	1928	30	1,020,124	.02941	20,123,684	.00149
Total		213	4,926,509	.04324	103,767,925	.00205
	1924	15	572,858	.02618	13,425,813	.00112
	1925	14	614,173	.02280	15,716,775	.00089
Colorado	1926	14	653,612	.02142	18,437,872	.00076
	1927	17	648,336	.02622	18,689,664	.00091
	1928	10	653,777	.01530	20,439,436	.00049
Total		70	3,142,756	.02227	86,709,560	.00081
	1924	33	875,843	.03768	25,633,293	.00129
	1925	24	888,673	.02701	27,019,154	.00089
Oklahoma	1926	38	927,787	.04096	28,900,489	.00131
	1927	34	886,491	.03835	26,460,393	.00128
	1928	26	904,755	.02874	29,236,923	.00089
Total		155	4,483,549	.03457	137,250,252	.00113

[fol. 40] A study of this table and also of table No. V shows a gradual decrease or lessening of injuries in all states during the five years mentioned, and there is a decrease in accidents in other states as compared with Arkansas, as shown by this table; in the State of Illinois there is an increase of approximately twenty-five per cent (25%) in accidents to the 100,000 train miles as compared with Arkansas, but it will be noted that the accidents in Illinois as per 100,000 car miles are approximately forty-one per cent (41%) less than in Arkansas. The increase in Illinois over Arkansas, as compared with the 100,000 train miles, is accounted for by the fact that in Dupo, Illinois, there is a very large terminal with two "humps," and the switch engines in this yard are manned by what are termed "hump riders"; that is to say, with one switch engine there are from fifteen to twenty-five switchmen, or "hump riders," while in Arkansas there are only three with each engine.

The figures as contained in the above tables show a general decrease in accidents reportable to the Interstate Commerce Commission during the five years mentioned, which is in line with the figures of the Interstate Commerce Commission, which show 85,570 reportable cases of injuries to passengers, employes and others resulting from steam railroad accidents for 1928 in the United States. This is a reduction of 19,247 accidents, or a decrease of eighteen per cent (18%) over 1927, and a reduction of 86,142—more than fifty per cent (50%)—over 1923.

[fol. 41] Conclusion

Based on his experience and the investigations he has made, affiant is of opinion that the operation in the State of Arkansas of switch engines and freight trains containing more than the standard crew does not minimize the casualties to employes in freight train and yard service, but, on the whole, the operation of switch engines and freight trains containing the standard crews would permit greatly increased efficiency and economy, and that such operation would be safer than present operation requirements under Arkansas laws; that the Extra Switchman and Extra Brakeman provisions of said Arkansas laws do not promote, but militate against efficiency, economy and safety, and are unreasonable and arbitrary limitations; and that compliance

therewith greatly increases the number of employes and the operating expenses over what are required for the safe, efficient and economical operation of the railroad of said company in the State of Arkansas.

James H. Amos.

Subscribed and sworn to before me this 21st day of October, 1929. W. Jenkins, Notary Public. My commission expires February 28, 1931. (Seal)

[fol. 42] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF LEWIS WARRENTON BALDWIN—Filed Nov. 18, 1929

STATE OF MISSOURI,
City of St. Louis, ss:

Lewis Warrington Baldwin, being first duly sworn, deposes and says that he is, and for the past six years has been, the President of the Missouri Pacific Railroad Company, with headquarters at St. Louis, Missouri, and that he makes this affidavit for use in the suit filed in the District Court of the United States for the District of Arkansas by the Missouri Pacific Railroad Company, to test the validity, and restrain the enforcement, of the Statutes of the State of Arkansas, commonly known as the Arkansas Extra Switchman Law and the Arkansas Extra Brakeman Act, which prohibit, under penalty, the operation of switch engines in the State of Arkansas without the extra switchman provided for in said law and the operation of freight trains without the employment of the extra brakeman required by said law; and affiant further says:

Qualifications

That he graduated from the Lehigh University in 1896, taking the degree of civil engineer; that he entered the service of the Illinois Central Railroad in 1896, and was, successively, Superintendent, Engineer Maintenance of Way, and General Superintendent of the Illinois Central and Yazoo & Mississippi Valley Railroad from 1906 to 1915;

that he then became General Manager and, later, Vice President and General Manager of the Central of Georgia Railway, and was located at Savannah, Georgia, from 1915 to [fol. 43] 1918; that he was Assistant Regional Director of the United States Railroad Administration, Southern Region, at Atlanta, Georgia, from February to June, 1918; that he held similar position in the Allegheny Region at Philadelphia, Pennsylvania, 1918 and 1919, and was Regional Director of the Allegheny Region from October 1, 1919, to February 29, 1920; that, in March, 1920, he returned to service with the Illinois Central Railroad, and was Vice President in Charge of the Operating Department, from March 1, 1920, to March 31, 1923, when he was elected President of the Missouri Pacific Railroad Company, which duties he assumed April 1, 1923.

Improvements and Betterments Added Since 1923

That since the year 1923, when affiant assumed the duties as President of the Missouri Pacific Railroad Company, said Company has expended annually large sums of money in making improvements, additions and betterments to its road bed, tracks and equipment, and also in the acquisition of new, heavier and stronger equipment and in the improvement of old equipment, all of which expenditures were for the safety of the public and its employes and for the purpose of enabling said Company to increase its freight and passenger traffic by affording prompt, reliable and dependable service to its patrons, and to avail itself of the economies that would accrue from efficiency in operation as a result of better and more improved facilities.

That during the years from 1923 to 1928, inclusive, the aggregate expenditures for these purposes was approxi- [fol. 44] mately $116,917,297.09, including the following items and amounts:

New Lines and Extensions, including Second Main Tracks	$17,679,854.45
Additional Ballast	3,860,888.77
Rails, Ties and Other Track Material	10,987,253.38
Strengthening and Replacing Bridges, Trestles, and Culverts	5,162,796.39

Assessments for Public Improvements	1,439,589.79
Changes in Grades and Alignment	6,937,595.74
Signals and Interlockers	3,637,081.32
New Locomotives and Improvements to Existing Locomotives	17,042,972.30
New Freight Cars and Improvements to Existing Cars	22,599,342.61
New Passenger Cars and Improvements to Existing Cars	5,400,241.06

That said expenditures in road and equipment were made progressively from year to year, as, when and where traffic conditions made such expenditures desirable, and the average annual amount so expended during the said six-year period was $19,486,216.18. That the new, heavier and improved locomotives and cars provided can be used and are available for use on all main lines wherever needed.

Increased Operating Efficiencies Since 1923

That in the year 1922, the average mileage per freight car per day upon the Missouri Pacific Railroad was 21.76 miles and that the average mileage per freight car per day upon said Road in the year 1928 was 40.63 miles, or an increase of 86.7 per cent. That the average train load per freight train mile (as represented as net tons carried one [fol. 45] mile) was increased from 614 tons in 1923 to 704 tons in 1928, or 14.7 per cent.

That a great many trains carry in excess of 25 cars and 704 net tons, the average being the result of the operation of lines in sparsely settled territory and the operation of light traffic branch lines in sections on which regular train service must necessarily be maintained regardless of the quantity of traffic available for such train service.

That the average tractive power of locomotives (passenger, freight and others) and the average freight car capacity upon the Missouri Pacific Railroad in 1923 and 1928 were as follows:

	1923	1928	Increase
Average Tractive Power of Locomotive (Pounds)	35,883	40,677	4,794
Average Freight Car Capacity (Tons)	37.49	40.74	3.25

That by reason of heavier train loading and greater efficiency in the operation of locomotives, the fuel consumption per 1,000 gross ton miles by said Company's locomotives in freight service was reduced from 180 pounds in 1923 to 141 pounds in 1928, or 21.7%.

That the aforesaid expenditures for improvements in road bed and equipment and the resulting economies in operation that flowed from the larger train loads enabled said Company to substantially offset the larger increases in wages and the increased cost of fuel and other material and supplies encountered in the last six years, and continue to maintain its railroad property in an efficient condition and render adequate service to the public without any increase in transportation rates.

[fol. 46] That in order to operate the Railroad with due efficiency and economy as required under Section 15a of the Interstate Commerce Act, it is necessary to load trains moving in the direction of traffic to the practical maximum capacity of the cars and locomotives whenever and wherever there is sufficient traffic for this purpose and the character of the lading and the necessity for accelerated movement will permit, and also to curtail operating expenses in every available manner.

That any statutory or other legislative acts which necessitate the expenditure of such amounts annually, as are required to comply with the Arkansas Extra Switchman Act and the Arkansas Extra Brakeman Law, necessarily have the effect of reducing general operating efficiency and to correspondingly increase the cost of supplying transportation service to the public, all of which is inconsistent with efficient and economical operation.

Number of Switchmen and Brakemen Employed Outside of Arkansas

That it is the regular practice of the Missouri Pacific Railroad Company and the standard practice of other Railroads in the United States to operate switch engines and freight trains in trains as long or longer in many localities outside the State of Arkansas, without the extra switchman and the extra brakeman required under the Arkansas Laws.

That the employment of extra switchmen and extra brakemen upon the switching and train crews in the State of Arkansas entails an enormous annual expenditure, which is entirely useless, and the employment of such extra employes is not in keeping with proper railroad efficiency and [fol. 47] economy, and that trains of equal length are operated upon other lines and equally frequent switch movements occur at such important terminals as St. Louis and Kansas City, without the employment of the extra switchman or the extra brakeman required under said Arkansas Laws.

Conclusion

Based upon experience and investigation, affiant is of the opinion that the maintenance of the extra switchmen and extra brakemen required by the Arkansas Laws, do not make for safety of operations and that the operation of switch engines and freight trains in Arkansas, as in other states through which the Missouri Pacific Railroad Company operates, would result both in increased efficiency and economy if such extra *brakemen* and extra brakemen were dispensed with, and that such operations would be as safe as present operations under the said Arkansas Extra Switchman and Extra Brakeman Laws.

Affiant is further of the opinion that the Arkansas Extra Switchman and Extra Brakeman Laws do not promote, but militate against, efficiency, economy and safety, and are unreasonable and arbitrary legislative provisions, and compliance therewith greatly increases the number of employes and the operating expenses over those reasonably required for the safe, efficient and economical operation of railroads in the State of Arkansas.

L. W. Baldwin.

Subscribed and sworn to, before me, this 13th day of November, 1929. Geo. W. Collins, Notary Public. My commission expires June 27th, 1933.

[fol. 48] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. E. BROOKS—Filed Nov. 18, 1929

STATE OF ARKANSAS,
County of Pulaski, ss:

W. E. Brooks, being first duly sworn, deposes and says: I am general superintendent of the Missouri Pacific Railroad Company and, as such, have supervision of said railroad company. My headquarters are at the City of Little Rock, State of Arkansas. I make this affidavit for use in suit filed in the District Court of the United States by the Missouri Pacific Railroad Company to test the validity, and restrain the enforcement, of the statutes of the State of Arkansas commonly known as the "Arkansas Extra Switchman" and the "Arkansas Extra Brakeman" laws, which prohibit, under penalty, the operation of switch engines in cities of the first and second class, and of freight trains of twenty-five cars or more, within the State of Arkansas, without the employment of the extra switchman and the extra brakeman required by said laws.

Qualifications

I am, and have been since January 10, 1919, general superintendent of the Southern district, comprising Missouri Pacific lines in Oklahoma, Arkansas and Northeast Louisiana, of the Missouri Pacific Railroad Company.

I have been employed by said company about forty years and during the course of such employment have held official positions as follows:

Train dispatcher,
Chief train dispatcher,
Trainmaster,
[fol. 49] Chief clerk to assistant general manager,
Superintendent, and
General superintendent.

Prior to my coming to the Missouri Pacific Railroad Company I was employed by the Atchison, Topeka & Santa Fe Railway Company as telegrapher and train dispatcher, and, with the Chesapeake & Ohio Railroad, as telegrapher.

Full Brakeman Law Now Impractical

The Arkansas Full Crew Law requires the third brakeman on trains of twenty-five cars or more, including the caboose, and its operation results in carrying the third brakeman on all through freight crews operating wholly within the state, there being no severe grade lines upon which through freight trains are now operated that reduces the train below the twenty-five-car limit.

Under the present condition of the roadbed and equipment of the Missouri Pacific lines in the State of Arkansas the provision of the Arkansas law regarding trains of twenty-five cars is practically obsolete. Freight trains of twenty-five cars or less are seldom, if ever, operated in the State of Arkansas in the direction of traffic, and the net result of the law is to force the third brakeman on all through freight trains operated wholly or partially within that state.

On trains operating partly in Arkansas and partly in an adjoining state, the third brakeman on the crew is confined to the territory lying between the first station in the adjoining state and the first freight terminal within the boundaries of Arkansas, and sets up a situation where two [fol. 50] men are used to perform all the duties required on the train outside of Arkansas for which three men are required, under the law, within the State of Arkansas. Under this law it frequently occurs that a train of twenty-five or more cars leaving Van Buren, northbound, with three brakemen, fills out to full tonnage for the locomotive to forty-five or more cars at Greenwood Junction, Oklahoma, at which point the third brakeman is dropped.

The Federal Safety Appliance Act requires power brakes on all cars and precludes, as a matter of safety, the use of hand brakes in stopping trains, and places the control of speed and stopping, as well as starting, the train entirely within the hands of the enginemen.

Freight trains, other than local trains, which do switching at stations, do not ordinarily carry freight cars for points between the terminals of the runs. There are, therefore, no routine duties assigned to the third brakeman by the rules and regulations of the company.

Duties of Third Brakeman

Brakemen are not required to keep any records for the use of the company; they report for duty fifteen to twenty

minutes in advance of the time set for departure of their train; see that a supply of hand lanterns, fusees, torpedoes for signaling purposes, as well as prepared journal-box packing and tools to handle it, have been placed upon the caboose by another employe, who is regularly assigned to that duty; place proper train markers on the rear car of the train, and see that air-brake hose are coupled up and working. This latter requirement is accomplished by a glance at an air-pressure gauge placed on the wall of the [fol. 51] caboose immediately in front of the brakeman's seat in the cupola and also visible from the floor of the car. If, for any reason, their train stops on the main line, they are required to go to a point sufficiently far to the rear of their train to stop any following train, where they will remain until called in by whistle signals from their own engine, or the following train has arrived and stopped. The brakeman on the forward end of the train is required to open switches to let his train into the siding when necessary to get out of the way of more important trains, and this switch is closed by the rear brakeman when the caboose has cleared it. During the time a train may be standing, and not requiring flag protection, they are required to look over their train to see that there is nothing detrimental to safe operation.

On all lines, both in and out of the State of Arkansas, where heavy less-than-carload freight and station switching occurs, the third brakeman is employed to advance the work and movement of trains assigned to that service; trainmen in through freight service are not required to brass cars set out by other crews; but, in the case of perishable freight, they are expected to use every effort to avoid setting out cars short of destination or of a repair point where car men are employed; and, when a car is so set out, short of destination or terminal of their run, an employe from another department of the service is sent to repair it.

There are no duties performed by three brakemen within the State of Arkansas which are not performed by two brakemen on other portions of the line.

[fol. 52] Grades on Arkansas Lines

The Missouri Pacific heavy traffic lines in the State of Arkansas, for the greater part, are located on the lowlands

adjacent to the Mississippi River, where the topography of the country is such that there are long stretches of level track, free from curvature; the grades, if any, are short and light. It is possible to pass signals over greater distances than prevail on other parts of the system. The main lines, where the traffic is more dense, are laid with heavy rail, fully tied and ballasted, and the liability for derailments and accidents is at a minimum; and the more important lines are equipped with automatic signal protection and long sections of double track.

It would appear that the framers of the law were more concerned in securing employment for additional men than in throwing safeguards around the operation of freight trains within the State of Arkansas. In 1907, at the time this law was placed on the statute books, the safety appliance laws and the regulations of the Interstate Commerce Commission had already imposed upon the railroads the requirement for air brakes, automatic couplers and other safety appliances which rendered the twenty-five-car requirement unnecessary and obsolete. This car-limit requirement would have been drastic and unreasonable in the day of hand brakes and link-and-pin couplers on lines such as exist in the State of Arkansas.

Effect of Extra Switchman Law

The law requiring the third switchman in cities of the first and second class within the State of Arkansas does not establish any specific duty which the third man or any other member of the crew is to perform. Practically all [fol. 53] street crossings, carrying heavy vehicular or pedestrian traffic, are protected either manually or by some form of advance notice, such as crossing flagmen, crossing gates manually operated, or signal indications operated electrically.

There are no duties required or permitting switchmen to go between cars for the purpose of coupling or uncoupling in switching service. Additional help may be necessary in certain yards on account of difficulty in performing switching service due to excessive curvature in track layout, rendering it impracticable to transmit signals; under such circumstances, terminal superintendents and yardmasters have authority to use additional yardmen as the circumstances warrant.

Conclusion

The operation of the Arkansas Full Train Crew and Switching Crew Laws, requiring the railroads to employ extra and additional men above the actual requirements for safe and efficient operation, results in an enormous annual expense which cannot be justified. The operating officers are men of experience and their chief concern is safe, prompt and economical operation of the property. Without exception, they believe that these laws are uneconomical, inefficient, burdensome and indefensible from any standpoint.

W. E. Brooks.

Subscribed and sworn to before me this 23rd day of October, A. D. 1929. My commission expires September 26, 1931. Ross A. Lee, Notary Public. (Seal.)

[fol. 54] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JOHN CANNON—Filed Nov. 18, 1929

STATE OF MISSOURI,
City of St. Louis, ss:

John Cannon, being first duly sworn, deposes and says: I am Vice-President and General Manager of the Missouri Pacific Railroad Company and, as such, have supervision over the operating department of said Railroad Company; my headquarters are at the City of St. Louis, State of Missouri, and I make this affidavit for use in suit filed in the District Court of the United States by the Missouri Pacific Railroad Company to test the validity, and restrain the enforcement, of the statutes of the State of Arkansas, commonly known as the Arkansas Extra Switchman and the Arkansas Extra Brakeman Laws, which prohibit, under penalty, the operation of switch engines and freight trains in the State of Arkansas without the employment of the extra switchman and extra brakeman required by said laws.

Qualifications

I am, and have been since September 1, 1926, Vice-President and General Manager of the Missouri Pacific Rail-

road Company. I have been employed by said company for about twenty-five years and, during the course of such employment, have held official positions as follows:

Superintendent,
General Superintendent,
General Superintendent of Transportation,
Assistant General Manager,
General Manager, and
Vice-President and General Manager,

[fol. 55] Prior to my coming to the Missouri Pacific Railroad Company, I was connected with the Illinois Central Railroad Company in various capacities, part of which time I was employed as a trainman and as a Trainmaster, and had opportunity to observe the operations of trains, the work of trainmen, not only as a supervisor, but also in the actual performance of their duties.

Obsolete Operating Practices

Three brakemen were used on a great many divisions of the Missouri Pacific Railroad during the early days of railroading, when freight cars were equipped with link and pin couplers and trains were controlled by hand brakes. Freight engines and freight cars then in service were not equipped with air brakes, and, when necessary to make stops or reduce speed, account descending grade, passing through stations and towns, the control of the train was almost entirely entrusted to the train crew. The following, quoted from the rules for the government of employes of the operating department, effective November 1, 1901, illustrates some of the more important duties formerly required of trainmen:

"They must know that there are a sufficient number of good brakes in each train to insure safety, and that the rear car of every train has an efficient brake.

"On arriving at a terminal station or where there is an inspector or foreman of repairs, conductors must report to him, in writing, any defects in the condition of the cars or any imperfect action of the brakes during the trip."

[fol. 56] "In the ordinary performance of their duties upon the road, conductors must collect and preserve all brasses, broken drawheads, brake rods, car doors, and other

broken material which must be taken to terminal stations and delivered to the car foreman or other person designated to receive."

"The proper place for a freight train conductor, while his train is in motion, under ordinary circumstances, is in the cupola of his caboose. If the caboose should not be provided with a cupola, he will then maintain such other position, either on the top or inside, as will give him a full view of his train, and enable him to see that his men properly perform their duties, and to know that his brakemen go out promptly when necessary to flag. He must also keep a sharp lookout, especially when rounding curves. He must require all his brakemen to be on top of the train at least one mile before arriving at and while passing all stations and stopping places, descending and ascending grades, or at any point or time when extra precaution is necessary to insure safety."

In 1906, the management of the Missouri Pacific Railroad reduced the men in the crews of through freight trains, on all districts where an additional trainman had been employed, to an engineer, fireman, conductor and two brakemen, as the work of the crews had been so materially lessened, due to the introduction of modern appliances, such as air brakes and automatic couplers, that there was no longer any necessity for a third brakeman on through freight trains.

[fol. 57] Modern Improvements in Train Operation

The work of trainmen has undergone a radical change in the past twenty-five or thirty years, principally brought about by improvements that have been made in equipment and the better maintenance and inspection of cars and locomotives. The installation of automatic couplers, air brakes, improved draft gear, steel underframes and construction, the closer inspection of trucks, wheels, journals and bearings have greatly reduced the delays to trains, the work of the crews and almost entirely eliminated brassing cars and packing boxes by roadmen.

In fact, the duties of trainmen have been so materially reduced that the work of brakemen today consists, for the most part, in looking out for signals, lining up switches at

meeting points, protecting their trains by flagging, and looking over the running gears, brake and draft rigging of trains at points where stops are made. The enormous increase in the amount of perishable freight handled, the necessity for prompt and accelerated movement have reduced the number of stops of through freight trains to those of meeting trains, taking coal and water. Automatic signals, heavier rail, fully ballasted track have reduced the hazard of accidents in freight service to a minimum.

Present Service of Train Crews

Freight trainmen usually report for duty at terminals about fifteen minutes prior to the time set for the departure of the trains; their trains are inspected before leaving terminals by car-men, who couple up the air and make the [fol. 58] required tests after the engine has been put on the train. At all important terminals, the cars contained in the train have been listed by the yard clerks, the waybills sorted out and handed the conductor, together with his wheel report, practically all of which work at one time devolved upon the train crew. Even the supplies for the crews are placed on the cabooses, and the trainmen are only required to make requisitions for such supplies as are needed and to know that they have been furnished before starting out on their runs. The head brakeman usually couples the engine onto the train, the rear brakeman puts out his markers and, at night, lights the caboose lamps and lanterns, the conductor gets the orders and the train is ready to go.

The record of hot boxes packed by road men for the month of June, 1929, shows 1.25 hot boxes per 100,000 car miles; on the basis of an average train haul of 125 miles and an average of 50 cars per train, which is in excess of the train load for June, which was 46.74 cars, would mean one hot box for each thirteen trips. The average for June, 1929, was higher than ordinary, it being .99 in May, and .93 in April, 1929.

Train partings have been almost entirely eliminated by the use of automatic couplers and improved draft rigging. During June, 1929, out of a total of 20,668 freight trains run, there were only 112 trains reported during that month as breaking in two, or one train out of every 185 run, so

that a crew working every day would average a train to break in two once in each six months. Trainmen have been almost entirely relieved of the work incident to trains breaking in two, or chaining cars together.

[fol. 59] Ruling Grades in Arkansas

Ruling grades on main lines in the State of Arkansas are among the lightest on the system. The following main-line districts, wholly or in part within the State of Arkansas, have ruling grades as follows:

		Ruling grade		Maximum curvature
		N. & E.	S. & W.	
Poplar Bluff to North Little Rock	180 miles	0.45	0.57	3°-03′
North Little Rock to Texarkana	146 "	0.80	1.11	3°-02′
Van Buren to Little Rock	154 "	0.60	0.63	5°-50′
Paragould to Lexa	105 "	0.35	1.10	5°-10′
Lexa to McGehee	82 "	0.20	0.24	7°-30′
Little Rock to McGehee	101 "	0.40	0.50	3°-00′
McGehee to Monroe	94 "	0.20	0.30	3°-07′
McGehee to Ferriday	149 "	0.25	0.25	4°-00′
Gurdon to Collinston	134 "	1.12	0.99	8°-24′
Bald Knob to Memphis	90 "	1.12	1.10	3°-50′

These are some of the main lines, wholly or in part within the State of Arkansas, over which heavy traffic is handled and where, under the law, we are compelled to use the third brakeman for as much of the distance as lies within the State of Arkansas. There is more straight track, less obstruction of view, lighter grades and less liability for accident or emergency service than on any corresponding territory on the system.

Third Brakeman Unnecessary.

That there is no necessity for a third brakeman on through freight trains, handling twenty-five cars or more, in the State of Arkansas is most clearly demonstrated by [fol. 60] the fact that it is the general practice to take off the additional trainman at the first stop after passing the State Line, and to pick him up just before entering the State. On one district, we are compelled by the Arkansas State Law to use a third brakeman, Northbound, for a dis-

tance of six miles only, after which, the engine, hauling the same number of cars, proceeds to the terminal, 160 miles further, with two brakemen. Southbound trains on this same district run 160 miles with two brakemen and take on the third brakeman six miles out of Van Buren.

Trainmen have been relieved of riding on top of trains; the head brakeman rides in the engine cab or in a specially constructed cabin provided for his use on the engine tender; the flagman rides in the caboose on the rear of the train, and the third brakeman generally rides with the conductor and the flagman in the caboose. There is no work in connection with the movement of through freight trains that cannot ordinarily be handled by a conductor and two brakemen. All of the duties incident to through freight operation are being satisfactorily performed by a conductor and two brakemen on other parts of the system where trains of equal or greater length are handled, where the traffic is as heavy, train interference as great or greater, grades steeper, curvature and other conditions less favorable.

The track mileage, freight train mileage, freight car miles and the average number of freight cars per train mile, Missouri Pacific System, for the five-year period, 1924 to 1928, inclusive, is shown in statement attached for all of the States in which the Missouri Pacific Railroad operates.

[fol. 61] The average number of cars handled in freight trains in Arkansas very closely conforms with the average on the system; it is about the same in Arkansas as in Missouri and Oklahoma, and very much less than in the State of Illinois.

Unnecessary Expense of Third Brakeman

The expense to the Missouri Pacific Railroad for the third brakeman on freight trains in the State of Arkansas averages $350,000.00 per annum. This is an unnecessary expense. The third brakeman performs no useful service and, on trains where a part of the trip is within and a part without the State of Arkansas, he usually rides to the first stopping place beyond the State Line, where he leaves the train and remains until he can ride back to the terminal on the first available train, his pay continuing until he reaches the terminal. The greater part of the time for which he is

paid, he is not riding on the train, but lying around stations, waiting to get back to the point where he started to work.

The employment of unnecessary men by any common carrier is not only a useless waste of money, but also is so inefficient and inexcusable as to have a very harmful effect on the service in general and on the morale of the entire organization. The use of an unnecessary brakeman in our freight service on a small percentage of the trains run, covering an equally small percentage of the mileage, is indefensible from any angle, causes unrest and discontent among the employes on other parts of the system, and can only be regarded as providing, by means of an Act of the Legislature, employment for additional men, which the or- [fol. 62] ganizations were unable to accomplish by negotiations with the officers of the railroad, who had full knowledge of the necessities and requirements of the service and the number of men that were required to perform the duties necessary for the safe, prompt and efficient handling of trains.

Unnecessary Expense of Third Switchman

The Arkansas Law of 1913, providing for the use of the third helper on all switch crews, where switching, pushing or transferring of cars are made across public crossings within the city limits of cities of the first or second class, has resulted in an unnecessary and continuing expense to this company of $250,000.00 annually. The agreement with our yardmen provides that:

"A yard crew shall consist of not less than a foreman and two helpers,"

which applies on all other parts of the system, except within the State of Arkansas, where the third helper is employed in compliance with the law. The object of the act is, ostensibly, that the third helper shall afford protection at public crossings. The law, however, does not require the carrier to use this additional helper to flag prior to moving over the crossings or to give warning to highway travelers or to the drivers of vehicles. The additional switchman is required by this Arkansas statute on all switch engines whose duties require them to work over public crossings, even though the public crossings in the

territory where the switch engine works are protected by watchmen or gates, or whether the crossing may be used [fol. 63] but once in each day's work by the yard engine. The addition of the third helper to the standard switch crew does not guarantee any greater protection to the public than is already afforded under the rules and practices on all properly managed railroads. The book of transportation rules of the Missouri Pacific Railroad Company carries the following rule, promulgated by the American Railway Association, and which is a standard regulation in effect on practically all railroads in the United States, and which is rigidly enforced in all yards, this rule reading as follows:

"When cars are pushed by an engine, except when shifting or making up trains in yards, a trainman must take a conspicuous position on the leading car, and, when shifting over public crossings at grade, not protected by a watchman or gates, a member of the crew must protect the crossing."

In the year 1928, 20,826,900 cars were handled by switch engines in the various yards and terminals on the Missouri Pacific Railroad. Of this number, 4,832,376, or about 23 per cent, were handled by switch crews in the State of Arkansas. Experience shows that our public crossings are just as well protected in the other seven states through which we operate as they are in the State of Arkansas, and that highway crossing accidents are no less frequent on account of the employment of the third helper.

Arkansas is the only State that requires the use of a third helper on switch engines. The standard practice is for a switch crew to consist of an engineer, fireman, a foreman and two helpers. There are, of course, exceptions to [fol. 64] this standard rule in nearly all the large terminals where additional helpers are used on certain crews on account of conditions of grade and curvature, switching in and about places where the view is obstructed and signals cannot be readily passed. When such conditions justify the use of additional helpers, terminal superintendents and yardmasters have authority to use them.

Conclusion

State legislation on matters of this kind is unnecessary, as the judgment of the managing officers can and should be

[fol. 65]

Exhibit to Affidavit of John Cannon

Track Mileage

Year ending	Missouri	Kansas	Nebraska	Colorado	Illinois	Arkansas	Louisiana	Oklahoma
12-31-24	1,632.43	2,256.69	357.58	152.11	240.54	1,806.94	751.85	161.83
12-31-25	1,630.39	2,235.54	357.58	152.11	240.54	1,807.71	751.92	161.83
12-31-26	1,630.39	2,235.67	357.58	152.05	240.54	1,807.87	761.16	161.83
12-31-27	1,630.34	2,235.81	357.58	152.04	246.05	1,810.48	766.98	161.83
12-31-28	1,630.39	2,236.03	357.58	152.04	292.21	1,829.65	785.06	161.83

Freight-train Miles

12-31-24	3,868.496	3,975,008	564,943	304,538	810,695	4,197,809	1,370,050	508,420
12-31-25	3,964,543	3,905,549	563,365	352,216	803,775	4,449,839	1,915,447	522,422
12-31-26	3,988,352	4,101,732	561,348	412,729	962,182	4,486,887	1,633,897	560,789
12-31-27	4,266,781	4,115,975	551,720	390,007	795,347	4,051,469	1,306,235	544,160
12-31-28	4,232,011	4,382,564	529,856	427,929	981,920	4,280,202	1,216,924	599,963

Freight-car Miles

12-31-24	149,957,492	136,128,834	17,825,480	11,955,118	50,815,275	169,777,111	50,752,739	23,507,267
12-31-25	163,913,140	141,660,022	18,788,593	14,305,797	55,497,349	199,147,071	74,441,385	24,929,798
12-31-26	179,062,742	155,632,823	20,108,363	16,935,981	67,351,234	205,947,243	67,388,174	26,748,585
12-31-27	185,642,979	160,296,616	19,150,883	17,232,621	56,084,805	190,135,953	53,337,225	24,632,666
12-31-28	199,347,101	173,795,107	17,929,632	19,104,770	65,989,589	203,073,501	54,532,747	27,348,012

Average Number of Freight Cars per Train Mile

12-31-24	38.76	34.25	31.55	39.26	62.68	40.44	37.04	46.23
12-31-25	41.34	36.27	33.35	40.60	69.04	44.74	38.87	47.72
12-31-26	44.90	37.94	35.82	41.03	70.00	45.90	41.24	47.70
12-31-27	43.51	38.95	34.71	44.19	70.52	46.93	40.83	45.27
12-31-28	47.09	39.66	33.84	44.64	67.20	47.44	44.81	45.58

Missouri Pacific R. R. Co., St. Louis, Missouri, September 14, 1929.

Exhibit to Affidavit of John Cannon

Track Mileage

	Missouri	Kansas	Nebraska	Colorado	Illinois	Arkansas	Louisiana	Oklahoma	Total system
.....	1,632.43	2,256.69	357.58	152.11	240.54	1,806.94	751.85	161.83	7,359.97
.....	1,630.39	2,235.54	357.58	152.11	240.54	1,807.71	751.92	161.83	7,337.62
.....	1,630.39	2,235.67	357.58	152.05	240.54	1,807.87	761.16	161.83	7,347.09
.....	1,630.34	2,235.81	357.58	152.04	246.05	1,810.48	766.98	161.83	7,361.11
.....	1,630.39	2,236.03	357.58	152.04	292.21	1,829.65	785.06	161.83	7,444.79

Freight-train Miles

.....	3,868.496	3,975,008	564,943	304,538	810,695	4,197,809	1,370,050	508,420	15,599,959
.....	3,964,543	3,905,549	563,365	352,216	803,775	4,449,839	1,915,447	522,422	16,477,156
.....	3,988,352	4,101,732	561,348	412,729	962,182	4,486,887	1,633,897	560,789	16,707,916
.....	4,266,781	4,115,975	551,720	390,007	795,347	4,051,469	1,306,235	544,160	16,021,694
.....	4,232,011	4,382,564	529,856	427,929	981,920	4,280,202	1,216,924	599,963	16,651,369

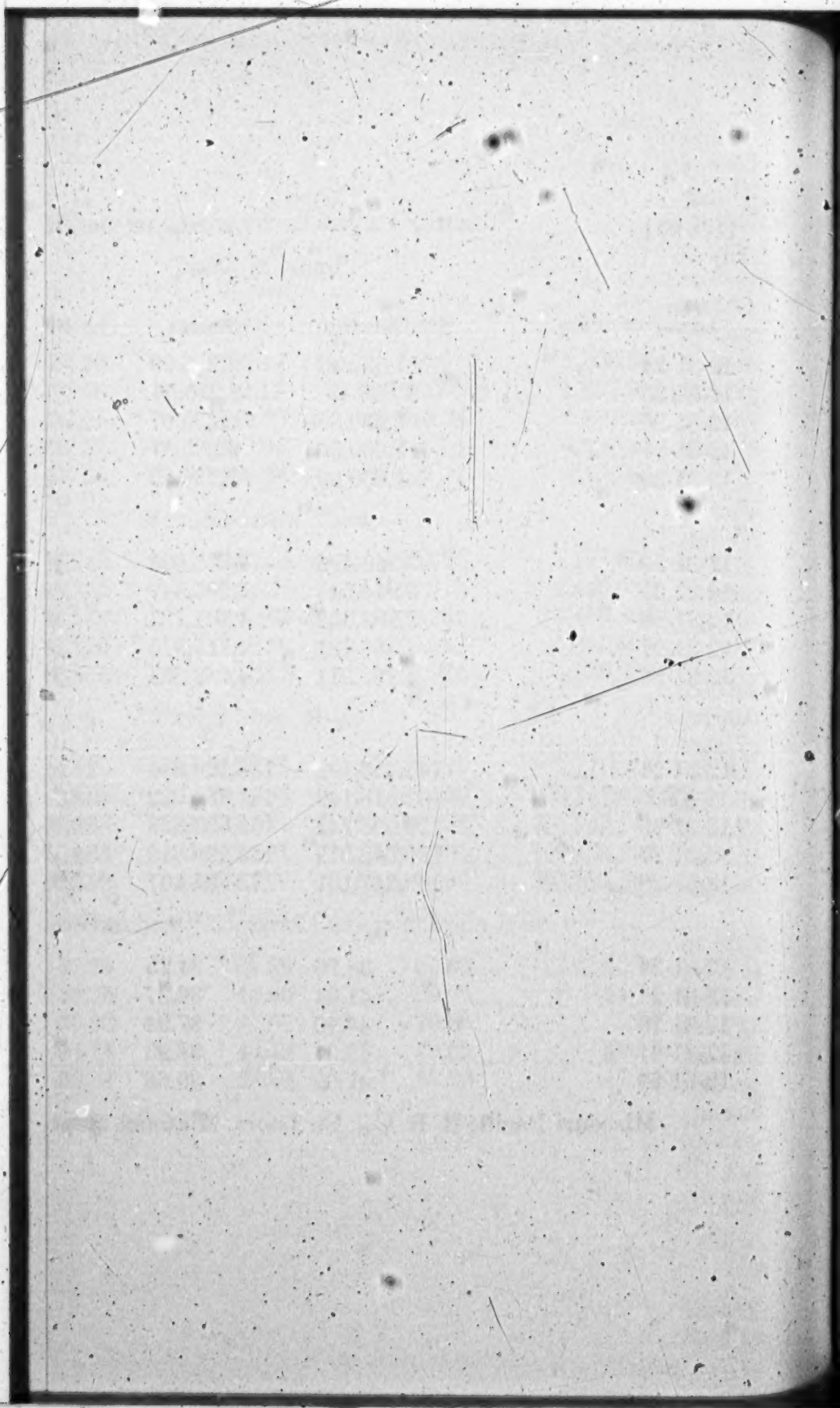
Freight-car Miles

.....	149,957,492	136,128,834	17,825,480	11,955,118	50,815,275	169,777,111	50,752,739	23,507,267	610,719,316
.....	163,913,140	141,660,022	18,788,593	14,305,797	55,497,349	199,147,071	74,441,385	24,929,798	692,683,155
.....	179,062,742	155,632,823	20,108,363	16,935,981	67,351,234	205,947,243	67,388,174	26,748,585	739,175,145
.....	185,642,979	160,296,616	19,150,883	17,232,621	56,084,805	190,135,953	53,337,225	24,632,666	706,513,748
.....	199,347,101	173,795,107	17,929,632	19,104,770	65,989,589	203,073,501	54,532,747	27,348,012	761,120,459

Average Number of Freight Cars per Train Mile

.....	38.76	34.25	31.55	39.26	62.68	40.44	37.04	46.23	39.15
.....	41.34	36.27	33.35	40.60	69.04	44.74	38.87	47.72	42.04
.....	44.90	37.94	35.82	41.03	70.00	45.90	41.24	47.70	44.24
.....	43.51	38.95	34.71	44.19	70.52	46.93	40.83	45.27	44.10
.....	47.09	39.66	33.84	44.64	67.20	47.44	44.81	45.58	45.71

i Pacific R. R. Co., St. Louis, Missouri, September 14, 1929.



depended upon to provide enough men to handle trains and conduct the work of switching cars, making up and breaking trains in a safe and efficient manner. These laws have the effect of placing additional men on trains and switching crews without regard to the necessity for their services, and require the railroad companies to carry this expense without any corresponding benefit.

John Cannon.

Subscribed and sworn to this 19th day of October, A. D. 1929. My commission expires June 27th, 1933. Geo. W. Collins, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

(Here follows exhibit to affidavit of John Cannon, side folio 65)

[fol. 66] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF M. T. FULTON—Filed Nov. 18, 1929

STATE OF MISSOURI,
County of Jackson, ss:

1. M. T. Fulton, being first duly sworn, deposes and says that he is, and has been for the past eight years, Supervisor of Safety for The Kansas City Southern Railway System, with headquarters at Kansas City, Missouri; that he makes this affidavit for use in a suit filed in the District Court of the United States for the Western District of Arkansas, by the Missouri Pacific Railroad Company, to test the validity and restrain the enforcement of the statutes of the State of Arkansas, commonly known as the Arkansas Extra Switchmen and the Arkansas Extra Brakemen Laws, which prohibit, under penalty, the operation of switch engines without the extra switchmen provided for in the said law and the operation of freight trains without the employment of the extra brakemen required by said law.

2. This affiant further states that he has been in the service of The Kansas City Southern Railway Company since 1906; that since 1920 he has been Supervisor of Safety; that during the four years prior to 1920 he was Chief Clerk to General Superintendent of Transportation; that during the past twelve years he has made a special study of the causes of accidents resulting in injuries to employes, passengers and others occurring upon The Kansas City Southern System, and has made various investigations with a view to minimizing the causes of such accidents and personal injuries.

[fol. 67] 3. This affiant has prepared a statement of injuries to passengers, employes, trespassers and others in all of the accidents reportable to the Interstate Commerce Commission during the eight years ending December 31, 1928, which statement is attached hereto and marked "Exhibit A"; that said statement shows the accidents in which persons were injured, resulting in a loss of time of over three days, in the case of employes, and the loss of more than one day as to others; that as to those accidents which do not come within the specified classification set out in

said Exhibit A, and which are totaled as miscellaneous accidents, this affiant has attached a detailed statement showing the nature of each individual accident—that is to say, the cause thereof.

4. Affiant further states that in his opinion neither the extra switchmen nor the extra brakemen, as the case may be, employed on The Kansas City Southern Railway System as a result of said Statutes of Arkansas, is essential or necessary to safe operation; that in the opinion of this affiant, as a result of first-hand observations of men at work on the ground, that the great majority of injuries to train and other employes are due to disregard of safe practices by the employe injured; that after due consideration of all the accidents on said Railway System during the year 1928, as to any such accidents as occurred on any division where an extra brakeman was not employed, or in switching districts where an extra switchman was not employed, it is affiant's opinion that there was not a single instance where the injury resulted from the absence of an additional brake-[fol. 68] man or switchman, as the case might be; and affiant further states that such has been his experience and the result of his investigation in the previous seven years.

5. Affiant further states that in his opinion the addition of such extra brakemen and such extra switchmen, as required by the Statutes of Arkansas, increases the number of employes who are subject to the usual risks inherent in train operations.

M. T. Fulton.

Subscribed and sworn to before me this 19th day of October, 1929. My commission expires April 10, 1932. R. R. Barr, Notary Public. (Seal.)

[fol. 69]

EXHIBIT "A" TO AFFIDAVIT OF M. T. FULTON

Injuries to Passengers, Kansas City Southern System Lines

(Compiled from Reports to Interstate Commerce Commission)

	Year 1928	Year 1927	Year 1926	Year 1925	Year 1924	Year 1923	Year 1922	Year 1921
All Causes	11	21	38	5	13	18	13	66

[fol. 70] Injuries to Employes in Train and Train Service Accidents, Kansas City Southern System Lines

(Compiled from Reports to Interstate Commerce Commission)

Proximate Cause	Year 1928	Year 1927	Year 1926	Year 1925	Year 1924	Year 1923	Year 1922	Year 1921
1. Collision	0	0	7	2	6	4	6	9
2. Derailments	1	9	4	4	0	2	15	4
3. Getting on or off	3	13	8	11	7	5	14	22
4. Falling from engines or cars	6	12	10	12	15	18	28	11
5. Coupling or uncoupling	4	7	4	6	6	11	6	6
6. Rough handling	1	0	4	3	1	3	1	5
7. Break-in-two	1	0	0	0	3	0	3	4
8. Handling switches	2	0	3	4	0	7	4	2
9. Shaking grates	0	3	1	0	1	5	3	3
10. Struck by engine or car	1	2	2	2	2	6	4	2
11. Struck by side or overhead obstruction	3	2	2	4	3	2	4	6
12. Miscellaneous accidents — Detailed statements attached	18	38	34	20	42	51	75	53
Total	40	86	79	68	86	114	163	127

The Kansas City Southern Ry. Co., Office of Supervisor of Safety, Kansas City, Missouri, September 30, 1929.

[fol. 71] Injuries to Trespassers and Licensees. Kansas City Southern System Lines

(Compiled from Reports to Interstate Commerce Commission)

Proximate Cause	Year 1928	Year 1927	Year 1926	Year 1925	Year 1924	Year 1923	Year 1922	Year 1921
1. Getting on or off	13	2	6	7	7	11	5	7
2. Falling from	3	2	6	5	5	5	6	9
3. Struck or run over	19	20	22	21	25	23	32	28
4. Derailment	1	3	0	0	0	2	10	5
5. Collision	0	0	7	0	0	3	0	3
6. Auto struck by passenger train	11	3	4	3	13	6	5	11
7. Auto struck by freight train	3	2	6	2	4	2	1	2
8. Auto striking passenger train	5	0	1	0	0	0	0	0
9. Auto striking freight train	3	4	4	1	0	1	0	3
10. Auto struck by switch movement	2	4	6	0	2	6	8	6
11. Auto striking switch movement	1	3	7	0	3	4	7	1
Total	61	43	69	39	59	63	74	75

The Kansas City Southern Ry. Co., Office of Supervisor of Safety, Kansas City, Missouri, September 30, 1929.

M. T. Fulton.

[fol. 72] Detailed Statement of Accidents Classified as Miscellaneous, Item 12, on Statement of Injuries to Employes in Train and Train Service Accidents on the Kansas City Southern System

Year 1928

1. Struck by blasted rock, Kansas City.
2. Finger mashed in the door, Kansas City.
3. Stepped on obstruction in Port Arthur yard.
4. Engine moved itself, cutting off finger, Leesville.
5. Foreign particle in eye conductor, Leesville.
6. Sand in eye switchman, Port Arthur.
7. Handling reverse lever strained back engineer, Pittsburg.
8. Riding in auxiliary cab seat gave way brakeman, First District.
9. Scalded by squirt hose fireman, Heavener.
10. Coal chute cable slipped, Lanagon.
11. Piece of journal jack struck eye brakeman, First District.
12. Engineer Kansas City struck in eye by wire in cab.
13. Switchman Pittsburg releasing brake, wrenched back.
14. Slack ran up in 52-car train took fireman off balance, First District.
15. Cinder in eye fireman, First District.
16. Engineer scalded by blowoff cock opened by fireman, First District.
17. Switchman, Kansas Ctiy, caught finger between rail and derail.
18. Engine watchman, Neosho, pulling truck, foot slipped, sprained back.

Year 1927

1. Conductor Ira Davis, Leesville, knocked down on car when struck engine.

[fol. 73]

2. Car stake fell on hand of switchman, Beaumont, Texas.
3. Running to catch caboose, fell in ditch, brakeman, Beaumont, Texas.

4. Car Inspector Watts slipped and fell walking alongside of train.
5. Engineer slipped and fell in deck of standing engine, Shreveport.
6. Fireman, Port Arthur, burned by explosion of gas in fire box.
7. Engineer at Hume got cinder in eye and it became infected.
8. Brakeman at Leesville got sand in eye.
9. Engineer at Shreveport got sand in eye.
10. Drop seat in cab of engine at Kansas City fell with engineer.
11. Helper (second) fireman strained back shoveling coal, First District.
12. Switchman, Port Arthur, sand in eye.
13. Engineer at Shreveport got sand in eye.
14. Brakeman at Lewis, runboard to depot fell on foot.
15. Engineer and First and Second Fireman and head Brakeman at Windsor, Oklahoma (4 persons) in locomotive boiler explosion, one killed, one fatally injured and two injured.
16. Squirt hose left open scalded second fireman at Pittsburg.
17. Porter strained back while loading mail at Beaumont.
18. Engineer at Oretta got foreign object in eye.
19. Fireman at Port Arthur got sand in eye.
20. Brakeman struck in abdomen by station runboard, Oil City.
21. Engineer at De Queen got sand in eye.
22. Switchman at Port Arthur got sand in eye.
23. Fireman at Marble City caught finger between fire door and clinker hook.

[fol. 74]

24. Fire- at Howe, coal stuck to shovel, sprained shoulder.
25. Switchman, Pittsburg, setting brake and chain broke.
26. Fireman at Anacoco got sand in eye.
27. Switchman at Kansas City, walking along track stumbled over grain door.
28. Engine foreman, Kansas City, stepped in hole sprained ankle.
29. Switchman, Port Arthur, got sand in eye.

30. Fireman, rock flew, broke goggles, glass in eye, Bon Ami.
31. Train Auditor struck by licensee on platform, Texarkana.
32. Engineer at Leesville oiling around slipped off side rod.
33. Brakeman at Amsterdam running beside car stepped on coal.
34. Brakeman, Shreveport, got foreign particle in eye.
35. Engine foreman riding footboard struck by auto.

Year 1926

1. Brakeman at Florien broke hand closing box-car door.
2. Engineer at Leesville burned by explosion of gas in fire box.
3. Fireman at Fort Worth fell in gangway on clinker hook.
4. Conductor at Leesville, letting off brake wheel, struck hand.
5. Engineer at Leesville got foreign particle in eye.
6. Special Officer on train near De Queen shot by trespasser.
7. Engine foreman, Port Arthur, got foreign particle in eye.
8. Engineer at Ft. Smith struck by reverse lever.
9. Fireman at Kansas City fell in deck as engine rounded curve.

[fol. 75]

10. Switchman at Shreveport setting brake struck by club.
11. Brakeman at Sandal, gang plank fell on knee and heel.
12. Brakeman at Gillham got sand in eye.
13. Conductor, switching at Lake Charles, riding on footboard, struck cable spool.
15. Conductor, stepping from car to car, Belt Junction, sprained ankle.
16. Conductor, rerailing car, tie fell on foot, Marble City.
17. Brakeman, First District, got cinder in eye.
18. Fireman scalded at Frierson when hose came off.
19. Brakeman, Leesville, stepping across cupola inside standing caboose fell.
20. Fireman at Peno, foot scalded by squirt hose.
21. Fireman at Texarkana, water tank spout fell on foot.

22. Brakeman, unloading heavy iron at Fisher, it fell on foot.
23. Engineer at Kansas City strained back removing brake beam.
24. Conductor trying to get horse out of bridge, bar fell on foot.
25. Fireman at Trenton scalded by squirt hose.
26. Engine foreman at Lake Charles, stake fell on foot.
27. Brakeman at Horatio mashed finger opening car door.
28. Engineer at Baxter Springs struck finger with hammer.
29. Engineer at Shreveport scalded on legs by squirt hose.
30. Conductor on caboose ladder, Rich Mountain, bruised when slack ran up.
31. Switchman, Shreveport, ruptured when foot slipped setting brake.
32. Brakeman at Holmes, car door came off hanger onto foot.

[fol. 76]

33. Brakeman, Shady Point, loading cotton, run board fell on foot.
34. Fireman at Amsterdam sprained back using coal chute.

Year 1925

1. Engine foreman, Kansas City, taking up frog, it fell on foot.
2. Train Auditor, Poteau, dentist's gas tank fell on foot in car.
3. Brakeman at Gravette, barrel of vinegar fell on instep.
5. Brakeman at Neosho, crate of lard fell on foot.
6. Brakeman at Howe, unloading barrel of paint, it caught his hand against door.
7. Brakeman at Anacoco dropped frog on foot.
8. Brakeman at Sulphur got hot sand in eye.
9. Fireman at Hume got sand in eye.
10. Coal passer Stilwell, helping unload fly-wheel, it fell on heel.
11. Engineer at Asbury got particle of sand in eye.
12. Brakeman at Amsterdam, unloading coal apron, it fell on foot.
13. Engineer Blanchard, repairing hose, startled by steam, jumped and struck his side on engine step.

14. Coal chute attendant, helping load box dry goods, ruptured.
15. Brakeman at Cove stepped on rock, sprained ankle.
16. Engineer at Kansas City got sand in eye.
17. Engineer at Heavener got cinder in eye.
18. Brakeman at Spiro, uncoupling steam hose, scalded.
19. Brakeman at Neame, unloading empty gas drum, sprained back.
20. Conductor at Belt Junction, walking alongside train, stumbled over pipe, broke two ribs.

[fol. 77] Year 1924

1. Brakeman at Richards, slack ran in, cut hand on stove anchor rod.
2. Engine foreman at Texarkana struck by rock thrown by unknown.
3. Brakeman at Spiro, arm, head and chest bruised when slack ran up.
4. Switchman at Joplin, brake club slipped and hit him on head.
5. Engine foreman, Sugar Creek, runboard from car to rock fell on him.
6. Fireman at Shreveport, taking oil, spout slipped out of hands and struck head.
7. Crossing flagman, Kansas City, struck by nut from passing train.
8. Engineer at Merwin burned on face by flames from fire box.
9. Fireman at Heavener, taking water and foot slipped off spout hit by lever.
10. Switchman, walking between tracks, stumbled on switch chain.
11. Brakeman at Noel wrenched back lifting sack of sugar.
12. Brakeman at Many, setting brake on car of logs, which shifted when coupling made.
13. Brakeman at Rodessa, setting brake on car of logs, which shifted when coupling made.
14. Conductor at McFadden, helping unload gravel, dump lever struck him.
15. Switchman at Shreveport, riding front footboard when auto was struck.
16. Brakeman at Leesville, tie fell from car and struck him.

17. Brakeman at Hume had rib broken when slack taken out of train.
18. Switchman, Knoche, setting brake, when chain rolled off and he fell against car.
19. Engineer at Worland scalded by squirt hose when he opened injector.

[fol. 78]

20. Engineer at Westline strained back handling reverse lever.
21. Fireman at Anacoco scalded when squirt hose blew off.
22. Brakeman at Gandy, walking along track, stepped on nail.
24. Switchman at Shreveport, setting frog, cut wrist on rail sliver.
24. Brakeman at Coal Creek, lifting barrel, sprained back.
25. Switchman at Kansas City stepped on nail.
26. Brakeman at Lewis, handling casting, which fell on foot.
27. Fireman at Shreveport, squirt hose burst, scalding his back.
28. Engineer at Poteau, handling reverse lever, bruised hand.
29. Brakeman at Vandervoort dumped bale of cotton on floor rack, which flew up and struck him.
30. Conductor at Noel, lifting sack of seed, sprained back.
31. Switchman at Kansas City, removing air hose, wrench slipped, back bruised.
32. Switchman at Pittsburg, using pipe to start car, sprained back.
33. Brakeman at Poteau, lifting green hides on car, sprained back.
34. Switchman at Kansas City jumped off dock onto a cob, sprained ankle.
35. Switchman at Kansas City stumbled over a pile of ties in yard.
36. Brakeman at Siloam, back bruised when slack ran up.
37. Switchman at Kansas City got particle of steel in eye.
38. Switchman at Kansas City, riding in door of stock car, bruised when slack ran up.
38a. Track laborer, Howe, struck by empty bottle thrown from train.

[fol. 79]

39. Switchman, Kansas City, got finger caught under derailing frog.
40. Special officer at Watts shot by trespasser.
41. Brakeman at De Quincy, riding in caboose, had hip bruised by stop.
42. Fireman at Pittsburg, taking water, when crane lever slipped and struck his head.

Year 1923

1. Brakeman at Gravette got sand in eye.
2. Swtchman at Heavener, riding end of gondola, end gate bruised hand.
3. Fireman at Vandervoort got sand in eye.
4. Switchman at Port Arthur wrenched back picking up pipe.
5. R. H. foreman at Kansas City, in deck of engine, caught foot in reverse lever slot.
6. Brakeman at Fuller, lighting fuse, burned hand.
7. Engineer at Heavener, taking off dope cup cap, wrench slipped, hurt hand.
8. Brakeman at Eve, warming hands in fire door, when it closed on his hand.
9. Freman at Pittsburg scalded by squirt hose.
10. Engineer at Shreveport, two fingers cut in guider.
11. Section laborer at Andersen, unloading tier, dropped one on foot.
12. Switchman at Kansas City, switch chain broke and struck groin.
13. Section laborer at Lanagan, unloading tier, one fell on foot.
14. Fireman at Bunch bursted blower pipe, scalded arm.
15. Switchman at De Queen, setting brake, wrenched finger.
16. Conductor at Watts, riding front footboard shoving car, had leg bruised.
17. Station helper at Heavener, unloading casting, mashed finger.

[fol. 80]

18. Brakeman at Gans, removing brake beam, sprained shoulder.
19. Fireman, taking oil, gas exploded, knocking him off tender.

20. Flagman on crossing Texas avenue, Shreveport, run over by auto.
21. Fireman at Mulberry, foot slipped in deck, wrenched back.
22. Fireman at Lisle, climbing down off tender, foot slipped, bruised side.
23. Fireman let sand box lid fall on finger at Sallisaw.
24. Engineer at Fuller, doctoring hot pin, grease burned hand.
25. Brakeman at Zwolle, running alongside of car, stumbled over obstruction, spraining ankle.
26. Fireman at Stillwell, using clinker hook, mashed finger.
27. Wrecker fireman at Holmes Park, chain broke, flew, broke arm.
28. Fireman, Watts, sand in eye.
29. Conductor at derailment, Hatton, angle bar flew off, bruised face.
30. Brakeman at Bacon, placing frog to rerail, thumb mashed.
31. Switchman, Kansas City, cinder blew in eye.
32. Brakeman at Mulberry, closing car door, bruised little finger.
33. Special officer, riding train at Kansas City, shot by trespasser.
34. Engine foreman, walking across tracks, Kansas City, stumbled, head cut on rail.
35. Brakeman at Leesville stepped on nail.
36. Brakeman at Page sprained back handling freight.
37. Engine foreman at Kansas City, passing by engine, scalded by steam from blow-off cock.
38. Fireman at Baron scalded by squirt hose.
39. Hostler helper at Kansas City scalded by squirt hose.

[fol. 81]

40. Fireman at Kansas City, putting in a fire, wrenched back.
41. Engineer at Mansfield scalded when steam pipe bursted.
42. Car inspector at Fort Smith crushed between cars.
43. Train porter at Amoret strained back lifting milk can.
44. Conductor at Zwolle, unloading freight, fell from gang plank.
45. Brakeman at Ashdown, flagging crossing, run over by auto.

46. Fireman at Kansas City got foreign particle in eye.
47. Brakeman at Pittsburg, walking along track, sprained ankle.
48. Conductor at Decatur, walking along track, sprained ankle.
49. Fireman at Shreveport burned by explosion of gas in fire box.
50. Engine foreman at Kansas City, climbing over fence to open gate, sprained knee.
51. Fireman at Kansas City, getting off seat box, foot slipped, sprained ankle.

Year 1922

1. Baggageman at Oil City claims sprained back handling baggage.
2. Fireman at Oskaloosa, fire door closed on finger.
3. Brakeman at Sallisaw, handling freight, bruised thumb.
4. Brakeman at Gentry bruised finger closing car door.
5. Fireman at Merwin, engine lurched, caused sprained wrist.
6. Brakeman at Gravette, in car, table fell on his toes.
7. Switchman at Kansas City, riding engine, scalded when grate stud blew out.

[fol. 82]

8. Switchman at Kansas City, turning water crane, bruised arm.
9. Switchman at Shreveport, checking car, chock flew up and bruised hand.
10. Brakeman at Bloomburg, driving spike with knuckle pin, cut eye.
11. Section laborer, in car of tier at Spiro, when coupled tie fell on foot.
12. Brakeman at Gravette, going back to flag, sprained ankle.
13. Switchman at Kansas City, carrying tie, it fell on foot.
14. Brakeman at Ravenna, engine deck apron struck ankle.
15. Hostler helper at Pittsburg, struck by reverse lever.
16. Brakeman at Hatfield got sand in eye.
17. Brakeman at Gillham, scalded by steam from blow-off cock.
18. Switchman at Pittsburg got cinder in eye.

19. Fireman at Merwin, finger bruised in fire door.
20. Brakeman at Mena, slack ran up, thrusting his hand through window.
21. Traveling fireman at Zwolle, hand burned by steam.
22. Fireman at Texarkana, gas in fire box exploded, burning him.
23. Brakeman at Lisle scalded by steam from blow-off cock.
24. Brakeman at Gandy stepped on a nail.
25. Baggageman at Horatio, train movement toppled trunk on foot.
26. Engineer at De Queen got sand in eye.
27. Hostler helper at Pittsburg, chunk of coal fell on his head.
28. Brakeman at Hume, lining derail, mashed finger.
29. Baggageman at Watts, engine spring thrown into car on foot.

[fol. 83]

30. Engineer at Asbury, wrench slipped, struck elbow.
31. Fireman at Amsterdam, taking down rod, bruised hand.
32. Assistant yardmaster at Kansas City, moving draw bar, it fell on foot.
33. Brakeman at Neal Springs, scalded by steam from cylinder.
34. Fireman at Mena, scalded by squirt hose.
35. Fireman at Gravette got sand in eye.
36. Engineer at Westville scalded by squirt hose.
37. Fireman at Worland scalded by steam in ash pan.
38. Engineer at De Queen, thumb bruised by reverse lever.
39. Engineer at Shreveport, hand bruised by reverse lever.
40. Engine watchman at Watts, taking coal, leg caught between apron and cab.
41. Brakeman at Stapp claims back strained handling freight.
42. Brakeman at Siloam, cutting rope, knife slipped and cut leg.
43. Brakeman at Merwin, taking down brake beam, bruised thumb.
44. Section laborer at Drexel struck by tie.
45. Brakeman at Watts, got cinder in eye.
46. Fireman at Air Line Junction, got cinder in eye.
47. Switchman at Beaumont, setting brake, wrenched back.
48. Fireman at Port Arthur, scalded by squirt hose.

49. Conductor at Pittsburg, spark from fuse fell in shoe.
50. Fireman at Gans, scalded by squirt hose.
51. Brakeman at Chaison, piece of steel stuck in hand.
52. Brakeman at Dorsey, wire on side of car struck in ear.
53. Brakeman at Mooringsport, handling freight, bruised knee.

[fol. 84]

54. Brakeman at Shady Point, opening car door, it fell on his back.
55. Brakeman at Shreveport, scalded when engine crown sheet failed.
56. Fireman at Fort Smith, scalded by squirt hose.
57. Machinist helper at De Queen, under engine, when engineer opened injector and scalded him.
58. Section foreman at Cleveland, unloading rails from car, one fell on foot.
59. Brakeman at Rich Mountain, doctoring hot box, burned hand.
60. Fireman at Pittsburg, scalded by squirt hose.
61. Engine foreman at Kansas City stepped on nail.
62. Engineer at Gans, placing rerailing frog, it fell on shin.
63. Brakeman at Spiro, going through cab door, cut wrist.
64. Engineer at Tipton Ford claimed engine riding hard cramped legs.
65. Switchman at Gas Center stepped on nail.
66. Brakeman at Siloam Springs lost balance, burned hand on stove in caboose.
67. Fireman at Joplin, taking oil, explosion knocked him off tank.
68. Engine watchman at Kansas City, shoveling coal, lump fell on foot.
69. Engineer at Mena, wrench slipped, scalded hand.
70. Fireman at Spiro, fire door closed on finger.
71. Fireman at Shreveport, gas exploded in fire box, burning face.
72. Engineer at Kansas City, cinders and dirt in eye from squirt hose.
73. Brakeman at Bloomburg, closing car door, bruised fingers.
74. Fireman at Pittsburg, examining fire, flash burned face.
75. Brakeman at Panama, fell while handling freight.

[fol. 85] Year 1921

1. Switchman at Kansas City, under car to cut out air brake, head struck by lever.
2. Baggageman at Neosho claims back strained loading trunk.
3. Brakeman at Cleveland, loading grain doors, bruised hand.
4. Switchman at Kansas City, riding end of gondola, fingers bruised by wheels.
5. Switchman at Kansas City, walking through yard, stepped on stone, turned ankle.
6. Fireman at Siloam Springs got foreign particle in eye.
7. Brakeman at Cleveland got foreign body in eye.
8. Brakeman at De Ridder, pulling switch chain, ruptured.
9. Engineer at Sandel, injured in boiler explosion.
10. Fireman at Sandel, injured in boiler explosion.
11. Brakeman at Sandel, injured in boiler explosion.
12. Conductor at Sallisaw, scalded by squirt hose.
13. Engineer, Watts to Heavener, got cinder in eye.
14. Fireman at Sulphur Springs, scalded by squirt hose.
15. Engineer at Pittsburg, scalded by squirt hose.
16. Engineer at Black Fork Tank, stepped on brick in dark, sprained ankle.
17. Train porter at Gravette claims strained back lifting coop of chickens.
18. Switchman at De Queen, walking over car gravel, sprained ankle.
19. Switchman at Kansas City got cinder in eye.
20. Conductor at De Queen, unloading tier, strained back.
21. Brakeman at Mansfield, scalded by hot water from injector.
22. Fireman at Lyons got cinder in eye.
23. Engineer at Worland, rod cup grease blew out, burning face.

[fol. 86]

24. Conductor at Pittsburg missed hold, swinging against car, sprained shoulder.
25. Yardmaster at Heavener, stepped in depression, sprained instep.
26. Conductor, walking in yard at Joplin, sprained ankle.
27. Brakeman at Eve, face cut in altercation with hobo.

28. Brakeman at Worland, opened angle cock hose, struck elbow.
29. Engineer at Lisle, doctoring hot box, got hot grease in eye.
30. Engineer at Pittsburg, sand blew in eye.
31. Fireman at Lisle, hand burned by steam.
32. Switchman at Kansas City, foreman dropped frog on his hand.
33. Switchman at Kansas City, passing from car to car, skinned shin.
34. Conductor at Grandview got cinder in eye.
35. Foreman at Heavener scalded by sqiurt hose.
36. Switchman at Kansas City, releasing brake, bruised finger.
37. Train porter at Fort Smith fell off truck, skinned shin.
38. Brakeman at Peno, reaching for brake valve, fell from seat.
39. Train porter at Watson, shot by bandits.
40. Brakeman at Trenton shot by unknown.
41. Engineer at Asbury, scalded and bruised when side rod broke.
42. Fireman at Asbury, scalded and bruised when side rod broke.
43. Brakeman at Asbury, scalded and bruised when side rod broke.
44. Fireman at Holmes had fingers bruised by fire door.
45. Brakeman at Merwin, stepped in hole, sprained ankle.

[fol. 87]

46. Engineer at Pittsburg, oiling around, fell in cinder pit.
47. Fireman at Doty struck by flying gravel.
48. Engineer at Siloam Springs, between engine and car to chain up, engine rolled back, bruising chest.
49. Brakeman at Converse, foot bruised by oil barrel rolled by other brakeman.
50. Brakeman at Grandview, releasing brakes, bruised fingers.
51. Conductor at Pittsburg, fingers mashed by gate of car.
52. Brakeman at Heavener, strained in groin handling freight.
53. Brakeman at Sallisaw, closing car door, bruised hand.

[fol. 88] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF H. P. GALBREATH—Filed Nov. 22, 1929

STATE OF ARKANSAS,
County of Sebastian, ss:

H. P. Galbreath, being duly sworn, deposes and says:

I am superintendent of the Central Division of the Missouri Pacific Railroad Company, which extends from Little Rock through the State of Oklahoma to Coffeyville, Kansas, and have supervision over the Operating Department of said Company on said Division. My headquarters are in the City of Van Buren, State of Arkansas.

I am familiar with the Arkansas Full-Crew Laws and the result of operating freight trains and switch engines under the provisions of said acts.

Qualifications

I have been connected with the Missouri Pacific Railroad Company since 1905 as train dispatcher, chief train dispatcher, trainmaster and superintendent. I was located at De Soto and Poplar Bluff, Missouri, as train dispatcher, chief train dispatcher and trainmaster until May 1, 1926. I was superintendent at Atchison, Kansas, for the Missouri Pacific Railroad Company from June 1, 1926, to December 1, 1926, and since then have been located at Van Buren as superintendent.

Effect of Operations under Full-train-Crew Law

To comply with the full-train-crew law it is necessary to have a third brakeman on all trains out of Van Buren to Greenwood Junction, Oklahoma, a distance of 6.38 miles. [fol. 89] The third brakeman rides the train for this six miles, and it is necessary to either stop or slow down the train to permit him to get off at Greenwood Junction, where he remains until a southbound freight train reaches there, and it is then necessary for a southbound freight train to either stop or slow down so that he may get on the train for the purpose only of riding to Van Buren to comply with the law. These same trains operate between Coffeyville, Kansas, and Greenwood Junction, Oklahoma, with

only. two brakemen, and the trains are just as efficiently managed and operated as they are with the third brakeman.

We have about ten freight trains a day between Coffeyville, Kansas, and Van Buren, Arkansas, and upon each of these trains between Greenwood Junction, Oklahoma, and Van Buren, Arkansas, to comply with the law, it is necessary to have the third brakeman.

Unnecessary and Additional Cost of Operation

The first twenty-four days of October there was a total expense for this service covering the six miles in question of $494.27, or $20.59 per day. In a number of cases this third brakeman is only on duty for a period of one hour and thirty minutes to two hours from his departure at Van Buren until his retrun, where he is relieved, and he is paid wages for a full eight-hour day.

In addition to the unnecessary expense of the third brakeman riding the train for the distance of six miles between these points there is the expense of either slowing the train down or stopipng to permit the third brakeman to board the train or to alight therefrom.

[fol. 90] Full-switching-crew Law

To comply with the full-switching-crew law it is necessary to have a foreman and three switchmen with each engine, the switchman's rate being $6.62 per day of eight hours.

At Fort Smith we maintain four engines daily, except Sunday, and three engines on Sunday, the year around, working additional crews as needed to take care of the business. The fifth crew having been worked at this point the past month, which is an additional and unnecessary expense, to comply with the law, under the present conditions of approximately $33.00 a day in Fort Smith.

At Van Buren train yard we operate four crews the year around, and one to two additional crews a greater part of the year, during the heavy coal and vegetable movement, five crews working during the month of October, or an additional and unnecessary expense of approximately $33.00 a day.

There are no duties performed or required to be performed by the additional switchman that could not be readily and easily performed by the foreman and two switchmen.

The expense of complying with this law at Van Buren, Fort Smith, and between Van Buren and Greenwood Junction, Oklahoma, amounts to the sum of approximately $86.00 per day.

Economical Waste

To comply with the full-train-crew and switching laws of Arkansas necessarily involves an economical waste. In the State of Oklahoma, or in Kansas, where there is no such law, the trains are just as efficiently managed and operated, [fol. 91] and with the same degree of safety, with only two brakemen, as they are in the State of Arkansas, and the same is true in the operation of switch engines in the State of Arkansas as compared with that of Oklahoma, Kansas, Missouri and other States where they have no such law.

H. P. Galbreath.

Subscribed and sworn to before me this 26th day of October, 1929. Ora Stuart, Notary Public. My commission expires 7-21-32. (Notarial Seal.)

[fol. 92] In United States District Court

Affidavit of O. A. Garber—Filed Nov. 18, 1929

State of Missouri,
City of St. Louis, ss:

O. A. Garber, Chief Mechanical Officer of the Missouri Pacific Railroad Company, makes this affidavit to be used in the proceeding by the Missouri Pacific Railroad Company, to test the validity of the Arkansas Extra Switchman Law and the Arkansas Extra Brakeman Law, by suit in the United States District Court in the State of Arkansas, and affiant states:

Qualifications

That since the year 1891, affiant has been continuously engaged in the railroad mechanical department of different

railroads, and his experience embraces the following service:

In 1891, affiant was Machinist Apprentice, working in the shops of the Wabash Railroad Company at Springfield, Illinois. Continuously for eleven years he was respectively, Machinist Apprentice, Machinist and Air Brake Foreman, in the shops of the Wabash Railroad Company. In the year 1902, affiant entered the service of the Baltimore & Ohio Railroad, at Bridgeport, Ohio, as Roundhouse Foreman. He continued as Roundhouse Foreman with the Baltimore & Ohio until the year 1903, when he entered the service of the Illinois Central Railroad at Paducah, Kentucky, as Machinist on air brake work. He continued in the service of the Illinois Central, as Roundhouse Foreman, Machinist Foreman and General Foreman, and then was in service of the Illinois Central as General Foreman at Mounds, Illinois, when he was made Master Mechanic for [fol. 93] the Illinois Central at East St. Louis, in the year 1911. He continued in the service of the Illinois Central as Master Mechanic at East St. Louis until the year 1917, when he was transferred to Waterloo, Iowa, in the capacity of Master Mechanic for the Illinois Central, and in the year 1918 he was transferred to Memphis, Tennessee, where he continued Master Mechanic until the year 1925, when he came to St. Louis as Mechanical Superintendent of Missouri Pacific Lines. He was appointed Chief Assistant Mechanical Officers of Missouri Pacific Lines in July, 1925, and since the fall of the year 1925 he has been Chief Mechanical Officer for the Missouri Pacific Lines.

Improvements in Equipment Since Enactment of Full Crew and Full Switching Crew Laws

That since the enactment of the Arkansas Extra Brakeman Law and the Arkansas Extra Switchman Law, the Missouri Pacific, with a view of promoting the safety of operations upon the lines of railroad operated by said company, has adopted the following safe-guards and improvements, all of which tend to lessen the hazard of service of the men employed in switching service and freight train operations.

That since the enactment of said laws by the State of Arkansas, the Government inspection of engines, power,

freight and passenger cars and other equipment, which prior to the enactment of said laws was negligible, has been taken over completely by the Federal Government and the engines, freight and passenger cars and other power and equipment of the Missouri Pacific and other railroads operating in the State of Arkansas are now very thoroughly inspected and tested by Government inspectors, [fol. 94] and all of the engines, power, freight and passenger cars and other equipment operated by the Missouri Pacific and other railroads in the State of Arkansas is subjected to most rigid Government inspections and tests.

That since the year 1903, upon the dates hereinafter set forth, the Interstate Commerce Commission has, by orders entered of record, required that the following percent of the cars in freight trains should be equipped with automatic air brakes to be operated from the engine, all of which cars are required by order of the Interstate Commerce Commission to be in good operating condition before leaving the different terminals, viz.;

On 2nd day of March, 1903	50 per cent.
On 15th day of November, 1905	75 per cent.
On 6th day of June, 1910	85 per cent.

That since the year 1913, within the knowledge of affiant, the Missouri Pacific has made the following improvements in its equipment, all of which tend to promote the safety of the employes engaged in the switching and train service of said company, viz.:

Under Orders of American Railroad Association

Single plate cast-iron wheels are being substituted for double plate wheels, upon all freight trains.

Cast steel side frames on all trucks on freight cars have been substituted for arch bar trucks as the cars are rebuilt, and all new cars purchased contain the cast steel side frames of the standard A. R. A. type.

Friction steel draft gear has been substituted upon all new equipment and upon all freight cars that are rebuilt, for the last five years upon the Missouri Pacific Railroad. [fol. 95] Steel draft arms have been substituted in place of wooden draft arms, and all freight cars purchased have

contained steel ends instead of wooden ends, and on all new equipment and equipment being rebuilt wooden underframes have been discarded for steel ends and steel underframes, upon said railroad.

That booster hand-brakes have been substituted upon all freight cars since the year 1923, in place of the ordinary hand brakes, and the substitution of booster hand-brakes for the old hand-brakes was in accordance with an Interstate Commerce Commission ruling of 11th day of March, 1911.

That since the year 1913, all engines on the Missouri Pacific have been brought up to the latest type of automatic air brake, and all engines now in freight service upon the Missouri Pacific Railroad are so equipped that brakes can be applied through the automatic system, and straight air can also be applied, and all cars on the train can be released and train held with the straight air while recharging the auxiliaries in train line. This was not possible when the Extra Switchman and Extra Brakeman Laws were passed, when the older type of air brake was in use upon the Missouri Pacific Railroad.

Since the passage of this law new and improved equipment was placed in service. These improvements consist largely of the adoption of the K triple valve on freight cars, in which the following features are embodied that lessen the hazards and duties of train service employes:

1. "Quick service feature," that is, that the graduating and slide valve in the triple valve so move on the first brake pipe reduction made by the engineer with the brake valve [fol. 96] that every triple valve makes a slight brake pipe reduction, thereby getting a more uniform serial application of the brakes, and lessening the slack action throughout the train.

2. "Uniform recharge." That when the engineer places his brake valve in full release position to release the brakes and recharge the brake pipe and brake system that the flow of air to the auxiliary reservoirs is restricted so that the auxiliary reservoirs on the rear portion of the train can charge uniformly with the head portion of the train, thereby securing a more uniform recharge of the entire brake system.

3. "Retarded release." By this means in releasing the brakes on a long freight train the flow of air from the brake cylinders on the forward portion of the train is restricted while the flow of air on the rear portion of the train is unrestricted and the entire train has a uniform release, thereby eliminating the running in and out of slack action.

The installation of these "K" triple valves on the Missouri Pacific has meant the discarding and scrapping of a large number of the old type "H" and "F" triple valves at a great expense to the Missouri Pacific Lines.

On passenger train cars the P. M. equipment, which is just a plain triple valve with an auxiliary reservoir for storage of the air has been in practically all cases superseded by the L. N. equipment to which an extra reservoir is attached, known as the emergency reservoir, thereby being able to gain a graduated release of the brakes, which brings about smoother train handling and a quick recharge of the auxiliary reservoir and brake system, in addition to a large storage of air to be used in emergency, bringing about a much safer and quicker stop.

[fol. 97] All passenger equipment cars built since 1922 have been equipped with the Universal Control valve which is the very latest type of air brake equipment. This valve takes the part of triple valve and in addition to the graduating feature of the triple valve has the quick service feature and high emergency brake cylinder pressure available at all times, a protection valve feature by which means the brakes on the train are thrown to emergency should the brake pipe pressure be reduced to 35 pounds regardless of the engineer's action.

The installation of these features have greatly increased the comfort of train service employes by the elimination of slack action and a quicker and more positive release of the brakes and have greatly added to their safety by the high brake cylinder pressure in emergency.

In addition to these improvements in Air Brakes the Missouri Pacific has adopted the very latest retaining valve placed in a position for easy access on all freight cars for the purpose of holding brake cylinder pressue if desired in certain cars while releasing brakes. Also the very latest bleed cock has been adopted whereby it is possible in switching cars to bleed the pressure from the auxiliary

reservoir for the purpose of switching in from 3 to 5 seconds, whereas in releasing brakes with the old style bleed cocks it took from 28 to 35 seconds. This means a considerable saving of time to the train service employes.

At the time the extra brakemen and switchmen's laws were passed all brake cylinder packing cups were of leather with expanding rings and gaskets of leather. Since that [fol. 98] time the Missouri Pacific has adopted a composition packing cup and composition gasket which give more satisfactory service in brake operation.

Carefully compiled records since February, 1925, show there has been a decided improvement in train handling on Missouri Pacific and a reduction in number of slid flat wheels and cases of trains parting which has been brought about by improvement in the maintenance of air brake equipment at considerable expense to the Railroad Company and greatly to the convenience of train service employes.

The general condition of the air brakes throughout the country is shown by the report of the Director of the Bureau of Safety of the Interstate Commerce Commission for the year 1928, in which on page 3 the following statement is made:

"During the year air brake tests were made on 2807 trains made up for departure from terminals, these trains consisting of 114,643 cars; air brakes were found operative on 114,026 of these cars, the average percentage of cars in trains which were controlled by air brakes being 99.47 per cent. Air Brake tests were made on 1,383 trains upon their arrival at terminals, these trains consisting of 67,923 cars; air brakes were found operative on 65,804 cars, the average percentage of cars in trains tested upon arrival at terminals having operative air brakes being 96.87 per cent."

That all of the above improvements in engines, power, freight cars, passenger cars and other equipment adopted by the Missouri Pacific Railroad have had the natural effect of lessening the hazard of the service and promoting the safety of the employes engaged in service upon the engines and freight trains of said company.

[fol. 99] Conclusion

That affiant is familiar with the standard practice of the Missouri Pacific Railroad and other railroads outside the State of Arkansas and within the knowledge of affiant, the through freight train crew in all states other than the State of Arkansas consists of a conductor and two brakemen and a standard freight switching crew on all railroads with which affiant is familiar, outside of the State of Arkansas, consists of a foreman and two switchmen.

That in the opinion of affiant, the employment of the extra switchmen and extra brakemen required by the laws of the State of Arkansas is wholly unnecessary to secure either safety or efficiency in switching or freight train operations, and in the opinion of affiant compliance with said laws is both an unreasonable and uneconomical practice.

O. A. Garber.

Subscribed and sworn to before me, this 22nd day of October, A. D. 1929. Geo. Franz, Notary Public. My commission expires Aug. 5th, 1930. (Seal.)

[fol. 100] In United States District Court

Affidavit of E. A. Hadley—Filed Nov. 18, 1929

State of Missouri,
City of St. Louis, ss:

E. A. Hadley, Chief Engineer of the Missouri Pacific Railroad Company, makes this affidavit for use in the suit instituted by the Missouri Pacific Railroad Company in the District Court of the United States in the State of Arkansas to test the constitutionality of the extra switchmen and extra brakemen laws of said State, and said E. A. Hadley deposes as follows:

Qualifications

I graduated from the Lowell High School, Lowell, Mass., in the year 1897. I was then apprenticed for four years to an engineering firm of Lowell, Mass., where I had a com-

bined course of study and practice in engineering. From September, 1900, until June, 1910, I was employed by the Boston & Maine Railroad in various positions from draftsman, assistant engineer, resident engineer to Engineer of Construction, and came to the Missouri Pacific as Engineer of Design on June 1, 1910, serving in that capacity and as Principal Assistant Engineer until May 1, 1915, when I was appointed Chief Engineer, and since this time I have been Chief Engineer, in charge of engineering and construction, and for several years also had charge of maintenance of way and structures.

Improvements and Safety Devices Constructed and Installed in the State of Arkansas Since 1920

That as Chief Engineer of the said Missouri Pacific Railroad Company affiant has had charge of the construction and installation of various improvements and safety de-
[fol. 101] vices upon said railroad in the State of Arkansas since the year 1920. That among the improvements and safety devices installed in Arkansas upon said railroad since said period, all of which were intended to and did make for the safer and more expeditious handling of traffic and for the safety of the traveling public and the company's employes, were the following:

Automatic Block Signals, upon the main line across the entire State of Arkansas, from the Missouri-Arkansas line to Texarkana, at a cost of	$2,106,859
Second Main Tracks—51.49 miles at a cost of	1,824,516
Elimination of Highway Grade Crossings—cost	35,790
Baring Cross Bridge—cost	1,310,403
Raising track above flood plane—cost	1,039,172
Telephone Train Dispatching System—cost	253,393
Manual Block System—cost	5,086
Heavier Rail—cost	6,371,650
Passing tracks—26.34 miles—cost	545,517
Ballasted Track—280.89 miles—cost	807,483
Total	$14,299,869

Conclusion

That since the year 1920, all of said improvements and safety devices above enumerated have rendered the operation of freight trains and switch engines upon the Missouri Pacific Railroad in the State of Arkansas, safer, and the [fol. 102] employes operating said trains less subject to accident while in the service of such company than prior to the installation and operation of said improvements and safety devices.

That affiant is familiar with the operation of trains and switch engines in the other states through which the Missouri Pacific Railroad operates, and that the standard freight crews consist of one conductor and two brakemen regardless of the length of freight trains operated in all of said states, and the standard switching crew consists of one foreman and two helpers in all the states through which the Missouri Pacific operates, with the exception of the State of Arkansas.

That in the opinion of affiant the extra switchmen and extra brakemen required by the laws of Arkansas is an extravagant and uneconomical practice and does not make for the safety of operations, and in the opinion of affiant the employment of said extra switchmen and extra brakemen required by the laws of Arkansas is wholly unnecessary.

E. A. Hadley.

Subscribed and sworn to before me this 18th day of October, 1929. Carl A. Rosen, Notary Public. My commission expires April 19, 1930. (Seal.)

[fol. 103] In United States District Court

Affidavit of E. H. Holden—Filed Nov. 18, 1929

State of Missouri,
County of Jackson, ss:

1. E. H. Holden, being duly sworn, on his oath states that he is General Superintendent of Transportation for The Kansas City Southern Railway Company, and has been so employed by said Railway Company since September, 1912; that from January 1, 1910, to September, 1910, he was employed by said Railway Company as Superintendent of its Southern Division, which extended from Mena, Ar-

kansas, to Port Arthur, Texas, from September, 1910, until September, 1912, after which it extended from DeQueen, Arkansas, to Port Arthur, Texas; and that from February, 1906, to January 1, 1910, with the exception of a short interval, affiant was employed by said Railway Company as Trainmaster at Shreveport, Louisiana. Affiant further states that in his experience as Trainmaster, Division Superintendent and General Superintendent of Transportation, he has had charge of and supervision over the operation of trains on said railway and the direction of and responsibility for train and switch crews, and has had occasion to study and observe the effect of the laws regulating the number of men required in train crews and switch crews, and more particularly the statutes of the State of Arkansas with respect thereto.

2. Affiant further states that the railroad of The Kansas City Southern Railway Company extends from Kansas City, Missouri, to Port Arthur, Texas, a distance of 786 miles; that it is divided into seven operating districts; that [fol. 104] parts of three of these districts, to-wit, the second, fourth and fifth, are in the State of Arkansas; that said railway enters Arkansas near the northwest corner of the state and extends through a portion of Benton County, a distance of approximately 28 miles, it then extends into Oklahoma to a point near Howard, in Polk County, Arkansas, and thence south to the Texas state line beyond which it extends in Bowie and Cass Counties, Texas, to a point in Miller County, Arkansas, and crosses a portion of Miller County, Arkansas, for a distance of approximately six miles, to the intersection of the Louisiana state line; that there is also a branch of said railway extending from Spiro, Oklahoma, to Fort Smith, Arkansas, approximately one mile of which is within the State of Arkansas. Affiant further states that, with the exception of Fort Smith, Arkansas, there are no towns at the various points where said railroad crosses the Arkansas state line, nor places at said state line where accommodations can be secured by the extra brakeman if laid off at the state line, so that, as a result of said Arkansas Statutory Crew Laws, said Railway Company has been compelled to carry an additional brakeman on each of its freight trains operated between Lanagan, Missouri, and Watts, Oklahoma, on its

second district, and between Heavener, Oklahoma, and DeQueen, Arkansas, on its entire fourth district, and between DeQueen, Arkansas, and Shreveport, Louisiana, on its entire fifth district, although, as to the fifth district, only 52.5 miles out of a total distance of 124.7 miles is in the State of Arkansas; that the situation is more graphically shown on the attached map (Exhibit "A"), showing the various operating districts, and in yellow line those portions of said [fol. 105] railroad within the State of Arkansas.

3. Affiant further states that during the ten years ending December 31, 1928, said Railway Company has expended for additional brakemen and switchmen solely by reason of the Arkansas Statutory Crew Laws, and not by reason of any requirements of said Railway Company, either for safety or convenience in operation, or otherwise, than solely to comply with said statutes, the following sums:

Year	Cost of additional brakemen	Cost of additional switchmen	Total
1919	$27,073.50	$4,855.31	$31,928.81
1920	41,635.07	9,228.80	50,863.87
1921	36,111.90	5,343.42	41,455.32
1922	38,652.21	5,020.45	43,672.66
1923	38,802.95	5,103.08	43,906.03
1924	33,394.92	4,398.42	37,793.34
1925	33,198.75	4,408.05	37,606.80
1926	33,921.88	4,568.19	38,490.07
1927	38,737.02	4,957.19	43,694.21
1928	38,578.56	4,366.50	42,945.06
	$360,106.76	$52,249.41	$412,356.17

4. Affiant further states that since the passage of the Arkansas Statutory Crew Laws, the Interstate Commerce Commission has increased the percentage of the cars that must be equipped with power brakes from 50 per cent of the cars in a train to 85 per cent of the cars in each train; and that now virtually all cars and all trains operated over said railway are equipped with air brakes and automatic [fol. 106] couplers, which are kept operative and in good condition, and there is a frequent inspection of said air brakes and couplers both by the Railway Company and by

representatives of the Interstate Commerce Commission. Affiant further states that during the ten years ending December 31, 1928, he has had charge of the reporting to the Interstate Commerce Commission of accidents on said railway involving a loss of time of three days or more, and has had occasion to investigate the causes of accident resulting from train operations; that these investigations have been made with a view to preventing the recurrence of avoidable accidents and eliminating unnecessary hazards of operation and seeing that disciplinary measures are administered where injuries or loss have been occasioned by negligence or carelessness; that the number of such accidents varies from year to year, and also varies on the different districts without any regard to or without being affected by the number of brakemen in road crews, or the number of switchmen in switch crews, or the number of cars per train.

5. Affiant further states that on freight trains carrying three brakemen, it is customary for one, called the forward brakeman, to ride on the engine, and for one, called the rear brakeman, to ride in the caboose with the conductor; that the third brakeman also usually rides in the caboose because of the complaint made by the men of the absence of any shelter for them if they ride in the middle of the train; that in the opinion of this affiant neither the extra brakeman nor the extra switchman required by the said Arkansas Statute are necessary or desirable, and they do not con-
[fol. 107] tribute to the safety of or efficiency in the operation of trains nor do they reduce or minimize the injuries to persons.

E. H. Holden.

Subscribed and sworn to before me this 15th day of October, 1929. Norman Brumwell, Notary Public in and for Jackson County, Missouri. My commission expires Feb. 10, 1931. (Seal.)

[fol. 108] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF JAMES E. HUTCHISON—Filed Nov. 18. 1929

STATE OF MISSOURI,
City of St. Louis, ss:

James E. Hutchison, being first duly sworn, deposes and says:

I am Vice-President of the St. Louis-San Francisco Railway Company and, as such, have supervision over the operating department of said Railway Company; my headquarters are at the City of St. Louis, State of Missouri, and I make this affidavit for use in suit filed in the District Court of the United States by the Missouri Pacific Railroad Company to test the validity, and restrain the enforcement, of the statutes of the State of Arkansas, commonly known as the Arkansas Extra Switchman and the Arkansas Extra Brakeman Laws, which prohibit, under penalty, the operation of switch engines and freight trains in the State of Arkansas without the employment of the extra switchman and extra brakeman required by said laws.

Qualifications

I am, and have been since January 1, 1924, Vice-President of the St. Louis-San Francisco Railway Company. I have been employed by said company for nearly twenty-seven years, and during the course of such employment have held official positions as follows:

Trainmaster,
Superintendent of Terminals,
Division Superintendent,
General Superintendent,
General Manager, and
Vice-President.

[fol. 109] Prior to my coming to the St. Louis-San Francisco Railway Company I was connected with various other railroads in various capacities as: Telegraph operator, station agent, train dispatcher, chief train dispatcher and trainmaster. By far the larger part of this employment was with the Chicago and Alton Railroad; although there was brief employment by the Denver & Rio Grande Western, Union Pacific, Chicago and Northwestern, and North-

ern Pacific, all of which was in the capacity of train dispatcher and the period involved on these four roads about two years. In these capacities, particularly that of trainmaster and superintendent, my duties required and I did spend a great deal of time in the yards and terminals with the switch engines and switch crews and on the road with the road trains and the road crews and have been very familiar with the duties of the men in this class of employment.

Operating Practices on St. Louis-San Francisco Ry. Co.

The use of the extra brakeman and the extra switchman in the State of Arkansas is a regulation that does not apply in any other state through which the St. Louis-San Francisco Railway Company operates. This Railway Company operates, in addition to the State of Arkansas, in the states of Missouri, Kansas, Oklahoma, Texas, Tennessee, Mississippi, Alabama and Florida.

There is nothing in conditions surrounding the operations in the State of Arkansas that is materially different from operations in other states. Our operation in the other states is just as efficient and just as safe and, in some respects more so, than in the State of Arkansas. The opera- [fol. 110] tion is safer in the other states in this respect: The injuries to men in train and yard service are found to be almost in exact proportion to the number of men employed, so that the additional brakeman and the additional switchman on the trains and in the yards in the State of Arkansas add an additional number of employes and the injuries to these men are higher in just about this proportion. These figures, of course, fluctuate badly from time to time, but over a period of years this statement seems to be borne out by the facts.

The St. Louis-San Francisco Railway Company has a line of railroad running from Memphis, Tennessee, to St. Louis, Missouri. Our freight trains leaving Memphis for St. Louis cross the Mississippi River immediately and are in Arkansas, and they run in Arkansas for about eighty miles. These trains, leaving Memphis, are given in compliance with the law an extra brakeman and this extra brakeman is used across the State of Arkansas. For convenience these men go to Hayti, a short distance into Missouri. At this

point the extra brakeman is dropped and the trains are almost universally increased in size at this point. We will add from a very few to thirty or forty cars to the train and proceed with the train less the extra brakeman and handle these additional cars and this extra length train just as well with the one less brakeman as we did in Arkansas with the crew comprising an extra brakeman. Every man of operating experience knows this to be a fact and knows that there is absolutely no necessity for the extra switchman or the extra brakeman. It is simply an expense forced upon the railroads for which there is no reason and our economy of operation is hurt in that respect.

[fol. 111] Some two or three years ago a compilation of the amount paid by all the railroads in the State of Arkansas for this extra switchman and this extra brakeman showed the total expense by all railroads to be nearly a million dollars. I do not have the exact figures available but my recollection is it was between nine hundred thousand and one million dollars per year.

So far as the extra switchman in the yards is concerned: The fact that the State of Arkansas is the only state in the United States that has made any such requirement and the further fact that yards all over the United States are operated successfully, economically and safely with crews consisting of a foreman and two switchmen should make it apparent to anyone that the extra switchman is simply an expense forced upon the railroads by legislation and that there is no justification for this expense.

To my mind it is patent that the railroads of the United States cannot comply with the Federal Transportation Act in its injunction that we operate our railroads efficiently and economically and pay out one million dollars a year to surplus and useless men in yard and train service in the State of Arkansas.

There are engines in yard service occasionally where the work is of a character that an additional man is needed. The railroads are always quick to put on this additional man where he is needed because it is economy to do so. On the road trains there is no condition where an extra brakeman is needed on any through freight train. On local freight trains, which do the local work, the switching around the small stations, the loading and unloading of merchandise and work of that character, wherever the work with one of

[fol. 112] these local freight trains is heavy at all it is the universal practice of the railroad companies to put an extra brakeman on these trains. This is done because it is economy to do it because we can, by the use of the extra brakeman, do the work at stations quicker and get our trains over the road in a lesser number of hours thus producing not only economy but efficiency and this the railroads do in all the other states where there are no laws regulating.

James E. Hutchison.

Subscribed and sworn to before me this 11th day of October, A. D. 1929. My commission expires November 12, 1932. Walter Studt, Notary Public within and for the City of St. Louis, State of Missouri. (Seal.)

[fol. 113] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF F. P. JOHNSON—Filed Nov. 18, 1929

STATE OF MISSOURI,
City of St. Louis, ss:

F. P. Johnson, being duly sworn, deposes and says that he is, and for the last three years has been, Vice-President in Charge of Finances and Accounts of Missouri Pacific Railroad Company, with headquarters at St. Louis, and affiant further says:

That he entered the service of the Missouri Pacific Railway Company (predecessor company of the Missouri Pacific Railroad Company) in February, 1889, and was successively office boy, clerk and chief clerk; that he was appointed Auditor Disbursements July 10, 1912; Assistant General Auditor February 1, 1913; Federal Auditor, August 1, 1918; General Auditor, March 1, 1920, and was elected Vice-President April 1, 1926.

As Vice-President he is in charge of accounts and records of the company.

The laws of the State of Arkansas (Paragraph 8577, Chapter 149, Digest of the Statutes of the State of Arkansas, 1921), compels all railroads operating in the State of Arkansas, engaged in the transportation of freight in

trains of twenty-five cars or more, to equip the same with a crew consisting of not less than an engineer, fireman, a conductor and three brakemen.

Paragraph 8583, Chapter 149, compels all railroad companies owning or operating any yards or terminals in the cities within the state where switching or transferring of cars are made across public crossings within the city limits of the cities to operate their switch crew or crews with not [fol. 114] less than one engineer, a fireman, a foreman and three helpers, the train crew being covered by the Act of 1907, page 295, paragraph 1, the switching crew being covered by the Act of February 20, 1913, page 211, paragraph 1.

The increase in the cost of operation of Missouri Pacific Railroad Company as the result of the third brakeman on freight trains in the State of Arkansas averages $350,000.00 per annum, while the increase in expenses of Missouri Pacific Railroad Company by reason of the third helper on all switching crews in the State of Arkansas is $250,000.00 per annum, or a total increase in the out-of-pocket cost of the company of $600,000.00.

Section 15 (a) of the Interstate Commerce Act (added February 28, 1920) provides in part as follows:

"* * * (2) In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole (or as a whole in each of said rate groups or territories as the Commission may from time to time designate) will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structures and equipment, earn an aggregate annual net railway operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property of such carriers held for and used in the service of transportation: Provided, That the Commission shall have reasonable latitude to modify or adjust any particular rate which it may find to be unjust or unreasonable, and to prescribe [fol. 115] different rates for different sections of the country.

(3) The Commission shall from time to time determine and make public what percentage of such aggregate prop-

erty value constitutes a fair return thereon, and such percentage shall be uniform for all rate groups or territories which may be designated by the Commission. In making such determination it shall give due consideration, among other things, to the transportation needs of the country and the necessity (under honest, efficient and economical management of existing transportation facilities) of enlarging such facilities in order to provide the people of the United States with adequate transportation: Provided, That during the two years beginning March 1, 1920, the Commission shall take as such fair return a sum equal to 5½ per centum of such aggregate value, but may, in its discretion, add thereto a sum not exceeding one-half of one per centum of such aggregate value to make provision in whole or in part for improvements, betterments or equipment, which, according to the accounting system prescribed by the Commission, are chargeable to capital account."

"* * * (6) If, under the provisions of this section, any carrier receives for any year a net railway operating income in excess of 6 per centum of the value of the railway property held for and used by it in the service of transportation, one-half of such excess shall be placed in a reserve fund established and maintained by such carrier, and the remaining one-half thereof shall, within the first four months following the close of the period for which such computation is made, be recoverable by and paid to the Commission for the purpose of establishing and maintaining a general railroad contingent fund as hereinafter described. For the purposes of this paragraph the value of [fol. 116] the railway property and the net railway operating income of a group of carriers, which the Commission finds are under common control and management, and are operated as a single system, shall be computed for the system as a whole, irrespective of the separate ownership and accounting returns of the various parts of such system. In the case of any carrier which has accepted the provisions of section 209 of this amendatory Act the provisions of this paragraph shall not be applicable to the income for any period prior to September 1, 1920. The value of such railway property shall be determined by the Commission in the manner provided in paragraph 4."

"* * * (9) The Commission shall prescribe rules and regulations for the determination and recovery of the ex-

cess income payable to it under this section, and may require such security and prescribe such reasonable terms and conditions in connection therewith as it may find necessary. The Commission shall make proper adjustments to provide for the computation of excess income for a portion of a year, and for a year in which a change in the percentage constituting a fair return or in the value of a carrier's railway property becomes effective."

Complying with this section of the Interstate Commerce Act, the Interstate Commerce Commission issues an annual order to all common carriers, the last order being dated January 18, 1929, covering the net railway operating income or deficit, and the recovery and payment of excess earnings under the provisions of Section 15 (a) of the Interstate Commerce Act, for the year ended December 31, 1928, requiring the carriers to report to the Commission in the following form:

[fol. 117] EXHIBIT A.

Return of the (Name of reporting carrier of system:) ——
for the Year Ended December 31, 1928

Summary of Return

	As reported by respondent	For use by the Commission
No. 1. Value of the railway property of the reporting carrier or carriers held for and used in the service of transportation (Exhibit B)	.....	.....
No. 2. Six per cent of the value of the railway property held for and used in the service of transportation, as reported under No. 1	.....	.....
No. 3. The amount of net railway operating income or deficit for the year (Exhibit C)	.....	.....
No. 4. The amount of net railway operating income for the year (if any) in excess of 6 per cent of the value of railway property held for and used in the service of transportation (Excess of No. 3 over No. 2)	.....	.....

	As reported by respondent	For use by the Commission
No. 5. One-half of the excess, if any		
No. 6. In case of excess, amount and nature of remittance		

[fol. 118] This report to be supported by statements showing descriptions of the property, its mileage and its investment in road and equipment at the close of the year.

In compliance with the orders of the Commission, the Missouri Pacific Railroad Company has rendered its report to the Commission from year to year showing the Investment in Road and Equipment, Investment in Material and Supplies, and Current Cash, amount for the year 1921 being $394,174,088.38, amount reported for the year 1928 being $521,896,172.05, the Investment in Road and Equipment being, for the year 1921, $381,011,010.68, and for the year 1928, $500,421,181.06, an increase of $121,410,170.38 this increase having been added to the property since 1921 for the purpose of providing more and better equipment furnishing greater tractive power for locomotives, and increased tonnage capacity for freight cars, reduction in grade line, heavier weight of rail, larger and better type of bridges for purposes of safety and to better serve the public, and reducing the operating expenses of the carrier.

The accounts and records of the company as reflected in its report to the Interstate Commerce Commission in connection with the Act of Congress and the order of the Commission referred to above, indicates that largely as the result of these additional expenditures the company has been enabled to reduce its operating ratio from 83.52% in 1921 to 75.31% in 1928.

During the same period its operating expenses have increased from $91,693,855.71 to $99,091,201.26. This reduction in operating ratio being brought about to a large extent by the ability of the company to carry a greater volume of traffic at lower costs per unit.

[fol. 119] Under the Transportation Act referred to above the Commission has determined that railroad companies' earnings shall not exceed six per cent on the value of its property, and that all earnings in excess of six per cent shall be divided with the Government. In spite of the

large added investment referred to above and the constant efforts being made to improve the service, and reduce the cost, the Missouri Pacific Railroad Company has been unable to earn the six per cent upon its investment which is suggested by Congress and the Commission as a fair rate of return. The return upon its property investment, including material and supplies and cash, for the several years following the passage of the Transportation Act are as follows:

1928	4.09%
1927	3.38%
1926	4.25%
1925	3.86%
1924	3.64%
1923	2.12%
1922	2.04%
1921	2.60%

The increased cost of operation resulting from the Act of the Arkansas Legislature regulating train and switching crews, amounting to $600,000.00 per annum, is equivalent to five per cent interest on a principal of $12,000,000.00, which might be used to much better advantage in the furnishing of additional facilities for the service required by the public. Stated in another manner, if added to the net railway operating income of the carrier for the year 1928, this additional income would have been equivalent to [fol. 120] eleven-hundredths of one per cent upon the property investment of the company.

The $600,000.00 per annum representing the cost of the additional members of the train and switching crews required by the State of Arkansas represents five per cent of the total transportation cost of the company in the state.

If similar laws are passed by other states through which the Missouri Pacific Railroad Company operates involving a like increase in the present expense for transportation service, the total increase in the operating expenses of the company for the year 1928 would have been $2,268,326.44, which is equivalent to forty-three hundredths of one per cent of the total value of the property of the company for that year.

There can be no question but that the rate of return established by Congress and the Interstate Commerce Commis-

sion for companies engaged in the transportation of freight and passengers has been conservatively stated, and unless the carriers are enabled to earn at least that rate of return upon the investment in their property the service to the public will be hampered and the ability to secure the additional capital necessary to furnish all improvements and extensions required will be seriously curtailed.

There can be no question but what every effort has been made in the past several years to improve the service and eliminate unnecessary expense wherever possible. There are only two ways by which this can be accomplished.

First. Is by the plan now in effect of eliminating all unnecessary expenses.

Second. An increase in freight and passenger rates.

It is apparent from the records that the company has not earned a reasonable return upon its property established by Congress.

[fol. 121] It is apparent from the records that considerable success has been attained in eliminating unnecessary expenses, and it is also a fact that there is still to be spent large sums of money in order to continue the improvement program necessary for the safety and proper and efficient management of the property and the affording of proper facilities and service by the company, and this cannot be done when state regulations require the expenditure of large sums which do not contribute to safe, efficient, economical or satisfactory service, or increased volume of traffic handled.

Unnecessary employment of railroad employes is not only inefficient and inexcusable, but an injustice to the employes themselves, in that it creates by an Act of the Legislature nonproductive employment that does not result in permanent benefit to the individual. It prevents them from exercising their rights to permanent employment in positions where their advancement will be assured, and where they will have a reasonable opportunity to permanent prosperity. It encourages the passage of similar laws in other states with a multiplication of the useless expenditure of funds which bring no permanent benefit to the transportation service, and prevents the officers of the

company from exercising their best judgment in the operation of the properties entrusted to their care.

F. P. Johnson.

Subscribed and sworn to before me this 22nd day of October, A. D. 1929. My commission expires Sept. 29, 1931. F. J. C. Sattell, Notary Public within and for the City of St. Louis, State of Missouri. (Notarial Seal.)

[fol. 122] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF W. G. KOCH—Filed Nov. 22, 1929

STATE OF ARKANSAS,
County of Sebastian, ss:

W. G. Koch, being first duly sworn, deposes and says:

I am Superintendent of the Fort Smith and Western Railway Company, and as such have supervision over the Operating Department of said Railway Company. My headquarters are in the City of Fort Smith, State of Arkansas.

The Fort Smith & Western Railway Company owns a line of railroad extending from Coal Creek, in Le Flore County, Oklahoma, in a general Westerly direction to Guthrie, Oklahoma, but it operates trains, both freight and passenger, from Fort Smith, Arkansas, to Guthrie, Oklahoma, and to Oklahoma City, Oklahoma, using the Kansas City Southern tracks from Coal Creek, Oklahoma, to Fort Smith, Arkansas, and at Fort Smith, Arkansas, it owns about one mile of main line track, together with its terminals in said city. Said Company operates over the Missouri, Kansas & Texas Railroad from Fallis, Oklahoma, to Oklahoma City, Oklahoma.

Qualifications

I have had forty-six years of railroad experience. During that time I have been telegraph operator, train dispatcher, chief train dispatcher, trainmaster, assistant superintendent, and superintendent of the Missouri-Kan-

sas-Texas Railroad, St. Louis-San Francisco Railway and the Fort Smith & Western Railroad Company. I have been [fol. 123] chief dispatcher and superintendent of the Fort Smith & Western Railway Company for the past thirteen years, and I am entirely familiar with the effect of the Arkansas Full Crew Laws as applied to the trains of the Fort Smith and Western Railway Company.

Full-crew Laws

The law in Arkansas requires a crew of not less than three brakemen on freight trains consisting of twenty-five cars or over. All of the freight trains operated by the Fort Smith & Western Railroad Company in and out of Fort Smith, Arkansas, do not contain twenty-five cars, but the great majority of freight trains operated by said company do contain twenty-five cars or more, and said company for all such trains is required to use the third brakeman under the Arkansas law.

We have one freight train in and one freight train out of Fort Smith every day, and the service performed by the third brakeman on freight trains at Fort Smith is as follows:

Inbound trains: Except on Sunday his principal duty is to open the switch and head the train into the yard. This is the switch at the junction of the Kansas City Southern and the Fort Smith & Western Railroads in Fort Smith, and is located between one-fourth and one-half mile from the Arkansas-Oklahoma State line. Except on rare occasions the third brakeman does not get on trains at all, since he performs no duty ordinarily which requires him to get on the train, his chief duty being to open and close the switch, as stated above, which could be performed by either [fol. 124] one of the other two brakemen without any inconvenience.

Outbound trains: With respect to outbound trains the third brakeman required by the Arkansas law performs the same duty as is performed by him on inbound trains—he accompanies the train to the switch described above, and then he opens and closes the switch, which service could be easily performed by the remainder of the crew without inconvenience or trouble.

The necessity of complying with the law requires this third brakeman and the service performed by him is of no value to the railroad company, and prevents the operation of the railroad upon the most economical basis, as the amount paid to this extra brakeman is a useless and unnecessary expense.

This brakeman is only on duty thirty or forty minutes during the day, yet to comply with the law it is necessary to pay him a full day's wages, as he receives pay for eight hours, when it only requires thirty or forty minutes to comply with the law.

In cases where an inbound train reaches the State line within thirteen hours of the outbound train the third brakeman is supposed to meet the inbound train and then he receives pay on the basis of thirteen hours, and he gets paid for eight hours straight time and five hours time and a half. If the inbound train does not arrive at the State line within thirteen hours after the outbound train, then the third brakeman required under the Arkansas law receives pay at the rate of two days of eight hours each—which is one day's pay for each train.

[fol. 125] There can be no justification found in the economical administration of a railroad for this useless and unnecessary expense.

Switch-engine Crew

Our switching business is very light, requiring only one engine and one crew to do the work here, and the third man is required by law on this engine and is absolutely unnecessary and a useless expense, because the work is light and they don't handle a large number of cars at one time, and the three other men on the crew could very easily do the work safely and efficiently.

The crew shifts the cars around and puts them at the freight house when this train comes in on week days when the yard engine is on duty, and delivers cars going to the Missouri Pacific Railroad, the Kansas City Southern, Frisco, and Midland Valley. They set cars to industries on our line. Due to the fact that there are only a few industries located on the Fort Smith & Western tracks, the number of cars handled by the yard crew is small, and it

frequently occurs that there are four men on one car to be delivered to an industry located upon our line, when as a matter of fact the foreman and two men could easily perform the same service.

W. G. Koch.

Subscribed and sworn to before me this 26th day of October, 1929. Ora Stuart, Notary Public. My commission expires 7-21-32. (Seal.)

[fol. 126] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF C. F. LARSON—Filed Nov. 18, 1929

STATE OF MISSOURI,
City of St. Louis, ss;

C. F. Larson, being first duly sworn, deposes and says that he is, and for the past four years has been, Superintendent of Safety upon the Missouri Pacific Railroad Company, with headquarters at the City of St. Louis, Missouri; that he makes this affidavit for use in a suit filed in the District Court of the United States for the Western District of Arkansas, by the Missouri Pacific Railroad Company, to test the validity and restrain the enforcement of the statutes of the State of Arkansas, commonly known as the Arkansas Extra Switchmen and the Arkansas Extra Brakemen Laws, which prohibit, under penalty, the operation of switch engines in the State of Arkansas without the extra switchmen provided for in said law and the operation of freight trains without the employment of the extra brakemen required by said law; and affiant further says:

Qualifications

That affiant has been in the service of railroads in the United States in the Safety First and Claim Department of the Illinois Central Railroad and located at various points upon the Southern lines of said company, especially at McComb, Mississippi; that since October 15, 1913, he has been in the Claim Department and Superintendent of Safety of the Missouri Pacific Railroad Company; that

during all of this period he has specialized in various studies upon the cause of accidents to employes, passengers and outsiders upon the railroad, and made various investigations and studies in order to minimize the cause and [fol. 127] effects of such accidents and personal injuries to railroad employes.

Effect of Arkansas Extra Brakemen and Extra Switchmen Laws Upon Accidents

That from affiant's personal experience in claim and claim prevention work upon railroads, and his experience and investigation of conditions in the safety work upon the Missouri Pacific Railroad, affiant has reached the conclusion that the Extra Switchmen Law and Extra Brakemen Law of the State of Arkansas do not have the effect of minimizing accidents and personal injuries to employes and others upon the Railroads of Arkansas, but, on the contrary, that such acts have the effect of augmenting and increasing the risks and hazards of the service, and the consequent personal injuries of employes engaged in the operation of switch engines and freight trains in the State of Arkansas.

Comparison of Personal Injuries to Train and Engine Men in Arkansas and Other States

With a view of ascertaining the relative number of personal injuries to men employed in engine and freight train service in the State of Arkansas, as compared with other comparable divisions of the Missouri Pacific Railroad where extra switchmen and extra brakemen laws do not obtain, affiant has made a list of the reportable personal injuries to train service employes for the year 1928, giving the number of engine, train and yard men employed by petitioner on the Arkansas Division, Eastern Division, and Omaha Division of said Railroad, and the monthly average of men employed and the per cent of injuries to men employed, with the following results:

[fol. 128] Reportable Personal Injuries—Train Service Employes—Year 1928

Class	Arkansas Division		Eastern Division		Omaha Division	
	No. men employed	No. of injuries	No. men employed	No. of injuries	No. men employed	No. of injuries
Engineers	413	24	330	21	175	2
Trainmen	477	44	418	32	344	5
Yardmen	228	46	47	4	117	10
Total	1118	114	795	57	636	17
Average Injuries Monthly		9.5		4.7		1.6
Percent of Injuries to Men Employed		10.11		7.17		2.67

[fol. 129] That as evidenced by the above statement, the per cent of injuries to men employed upon the Arkansas Division of the Missouri Pacific Railroad Company for the year 1928 was 10.11; that the per cent of injuries to men employed upon the Eastern Division was 7.17; while the per cent of injuries to men employed upon the Omaha Division for the same period was 2.67.

That affiant selected the Eastern Division and the Omaha Division of the Missouri Pacific Railroad Company for the purpose of comparing the same with the Arkansas Division because of the fact that said Eastern Division of the Missouri Pacific Railroad Company, extending from St. Louis to Kansas City, Missouri, is the busiest single track railroad division upon the Missouri Pacific Lines, while the Omaha Division is served by the heaviest power and fastest freight trains, on account of the keen competition with other railroads between Omaha and Kansas City, of any division of the Missouri Pacific upon the Western Division, and, in the opinion of affiant, the Eastern Division and the Omaha Division furnish the best measures of comparison with the Arkansas Division that there is upon the petitioner's railroad.

Conclusion

That the only factor, in the opinion of affiant, which could increase the personal injuries to the men employed upon the Arkansas Division which does not obtain upon the Eastern Division and the Omaha Division of said Railroad, results from the Extra Switchmen and Extra Brakemen Laws of the State of Arkansas, and the consequent employment of one-third more men in that class of service, subject to the [fol. 130] hazards of the dangerous employment in which they are engaged; that the State of Arkansas is the only one of the eight states through which the Missouri Pacific operates where extra brakemen and extra switchmen laws obtain, and from affiant's experience and study of personal injury reportable accidents to employes upon the entire railroad property of the Missouri Pacific, the per cent of injuries to men employed in switching and freight train service is greater in the State of Arkansas than upon any division of the Missouri Pacific Railroad in any of the states through which it operates; that ever since affiant has

been Superintendent of Safety, the average number of switchmen injured per month in the State of Arkansas, upon such terminals as Little Rock and Texarkana, has been greater, considering the number of men employed, than upon either the Kansas City or St. Louis terminals, where a much greater volume of business is handled and a greater number of men employed in such service.

Wherefore, it is the opinion of affiant that the extra switchmen and extra brakemen laws of the State of Arkansas do not have the effect of minimizing or decreasing the number of personal injuries to men employed upon the railroads of said state, but, on the contrary, that such laws have the direct effect of increasing the injuries to men employed in the switching and freight train service upon the railroads in said state.

C. F. Larson.

Subscribed and sworn to before me this 25th day of October, 1929. My commission expires February 28, 1931. W. Jenkins, Notary Public. (Seal.)

[fol. 131] IN UNITED STATES DISTRICT COURT

AFFIDAVIT OF D. O. OUELLET—Filed Nov. 18, 1929

STATE OF MISSOURI,
City of St. Louis, ss:

D. O. Ouellet, being duly sworn, on his oath states:

Qualifications

He is General Superintendent of Transportation for the Missouri Pacific Railroad Company and has been so employed by said Railroad Company since February 1, 1926, and that prior to that date, since December 1, 1924, he was Superintendent of Transportation and prior thereto, since January 14, 1907, he was employed by the Missouri Pacific Railroad Company in the capacities of Dispatcher, Chief Dispatcher, Trainmaster, Special Assistant to Superintendent of Transportation, and Superintendent, on the present Arkansas, Central, Louisiana, Memphis and Little Rock Divisions, a portion or all of which territories are located

in the State of Arkansas, where the present Arkansas extra switchman and Arkansas extra brakeman laws obtain which prohibit, under penalty, the operation of switch engines and freight trains in the State of Arkansas without the employment of the third switchman and third brakeman required by said laws, and in addition, Trainmaster and Superintendent on the Eastern, Central Kansas and Colorado Divisions, located in the States of Missouri, Kansas and Colorado, where such laws are not in effect. Affiant further states that in his experience as Trainmaster, Division Superintendent, Superintendent of Transportation and General Superintendent of Transportation, he has had charge of and supervision over operation of trains on said Railroad and [fol. 132] the direction of and responsibility for train and switch crews and has had occasion to study and observe the effect of the laws regulating the number of men required in train crews and switch crews, and more particularly the statutes of the State of Arkansas with respect thereto.

Location of Petitioner's Road

Affiant further states that the railroad of the Missouri Pacific Railroad Company operates into or through the following states: Illinois, Missouri, Oklahoma, Arkansas, Louisiana, Kansas, Nebraska, Colorado, a total mileage of 7,103.50; that it is divided into three general operating districts which comprise a total of eighteen operating divisions; all of or portions of the following operating divisions are located within the boundaries of the State of Arkansas and are affected by these laws: Arkansas Division, Central Division, Little Rock Division, Memphis Division, Louisiana Division, Illinois Division, White River [fol. 133] Division; that said Railroad enters the State of Arkansas at or near the following points: Cricket, Ark., Moark, Ark., St. Francis, Ark., Greenwood Jct., Okla., Texarkana, Ark., Felsenthal, Ark., Vaughn, La., Wilmot, Ark., Readland, Ark., Bridge Jct., Ark., and extends through or beyond the State between the points mentioned, a total of approximately 2,640 miles in Arkansas, to the intersection of: Illinois, Missouri, Oklahoma, Texas, Louisiana, Mississippi, Tennessee state lines. Affiant further states that due to the fact there are no adequate living facilities at points where said railroad crosses the Arkansas state line, nor

places at said state line where accommodations can be secured by the extra brakeman if laid off at the state line, as result of said Arkansas Statutory Crew Laws, said Railroad Company has been compelled to carry an additional brakeman on each of its freight trains operated

between state line and Poplar Bluff, Mo., approximately 19 miles;
between state line and Monroe, La., approximately 47 miles;
[fol. 134] between state line and Lake Providence, La., approximately 15 miles;
between state line and Oak Grove, La., approximately 11 miles;
between state line and Collinston, La., approximately 24 miles;
between state line and Greenwood Jct., Okla., approximately 4 miles:
between state line and Ft. Smith, Ark., approximately 4 miles;
between state line and Malden, Mo., approximately 12 miles;
between state line and Cotter, Ark., approximately 42 miles.

These third brakemen are paid actual miles when in excess of 100 miles; a minimum of 100 miles for each trip; overtime after eight hours, and in event relieved before arrival at a terminal, are paid on the basis of continuous time until their arrival at starting point, earning from $147.80 to $185.30 per month, compared with $190.00 to $224.30 per month earned by other brakemen in same territory.

Cost of Complying with Arkansas Laws

Affiant further states that as result of the Arkansas State Law requiring the use of third brakeman and Arkansas State Law requiring the use of third switchman, said Railroad Company has expended for additional extra switchmen end additional extra brakemen solely by reason of the Arkansas Statutory Crew Laws, and not by reason of any requirements of said Railroad Company, either for safety or convenience in operation, or otherwise, than solely

to comply with said statutes, the sum of approximately $600,000.00 per annum.

[fol. 135] Arkansas Laws Do Not Contribute to Safety

Affiant further states that during the year 1928, comparative figures as to reportable personal injuries to train service employees for the Arkansas Division, where the density of traffic is heaviest of any division in Arkansas, was 10.11% of injuries to men employed, while on the Eastern Division, situated wholly within the State of Missouri, was only 7.17% of injuries to men employed and on the Omaha Division, situated within the states of Nebraska and Kansas, was 2.67% and the density of traffic on the latter two divisions is equally as heavy or heavier than on the Arkansas Division.

Federal Rules as to Power Brakes and Safety

Affiant further states that since the passage of the Arkansas Statutory Crew Laws, the Interstate Commerce Commission has increased the percentage of the cars that must be equipped with power brakes from 50 per cent of the cars in a train to 100 per cent of the cars in each train; and that now all cars and all trains operated over said Railroad are equipped with air brakes and automatic couplers which are kept operative and in good condition, and there is a constant inspection of said air brakes and couplers by the Railroad Company and frequent inspections by representatives of the Interstate Commerce Commission. Affiant further states that during his connection with the Missouri Pacific Railroad Company, particularly in the capacities of Trainmaster and Superintendent, he has had occasion to investigate the causes of accidents [fol. 136] resulting from train operation; that these investigations have been made with a view to preventing the recurrence of avoidable accidents and eliminating unnecessary hazards of operation and seeing that disciplinary measures are administered where injuries or loss have been occasioned by negligence or carelessness; that the number of such accidents varies from year to year, and also varies on the different districts without any regard to or without being affected by the number of brakemen

in road crews or the number of switchmen in switch crews or the number of cars per train, except that the greater the number of men employed on each crew, the greater number there are of such employees liable to accident, regardless of the number of cars per train.

Conclusion

Affiant further states that on freight trains carrying three brakemen it is customary for one, called the forward brakeman, to ride on the engine and for one, called the rear brakeman, to ride in the caboose with the conductor; that the third brakeman also rides in the caboose with conductor and rear brakeman because there is no practical need for the third brakeman on a through freight train; that in the opinion of this affiant neither the extra brakeman nor the extra switchman required by the said Arkansas statute are necessary or desirable, and they do not contribute to the safety of employees or the public, or efficiency in the operation of trains nor do they reduce or minimize the injuries to persons; on the contrary, as stated above, by reason of the increased number of unnecessary [fol. 137] employees on and about the cars and trains as result of these extra men being employed, it is conducive to increasing the number of personal injuries.

D. O. Ouellet.

Subscribed and sworn to before me this 25th day of October, 1929. My commission expires 28th day of February, 1931. W. Jenkins,, Notary Public. (Seal.)

[fol. 138] In United States District Court

[Title omitted]

Affidavit of Frank Aldrich

State of Missouri,
City of St. Louis, ss:

Frank Aldrich, being first duly sworn, deposes and says that he is, and has been since November 1, 1917, General

Chairman of the Brotherhood of Railroad Trainmen on Missouri Pacific lines, representing train and yardmen, with headquarters at Atchison, Kansas, and that he makes this affidavit for use in the suit filed by the Missouri Pacific Railroad Company seeking to restrain the enforcement of the statutes of Arkansas commonly known as the Full Crew Freight Train and Switching Crew Laws and affiant further says:

Qualifications

That he has had twenty-nine years' experience in connection with railway operation as follows:

In 1900 he entered the service as yard clerk and weighmaster, transferring to train service as brakeman January 11, 1904, promoted to conductor January 8, 1910, and since November 1, 1917, has been general chairman for the Brotherhood of Railroad Trainmen, representing the men in train and yard service.

[fol. 139] Services Performed by Third Brakeman and Switchman

I am familiar with the operation of the Full Crew Laws of Arkansas, the duties and services rendered by the third brakeman on trains of twenty-five cars or more, and with the duties and services performed by switchengine crews operating over crossings in cities in compliance with the Full Crew Switchengine Law of Arkansas.

There are cities in the State of Arkansas that prohibit blowing or sounding of locomotive whistles within the city limits; thereby necessitating the movement of trains and cars by hand or lantern signals entirely, and in some of these towns, because of industrial plants being built close to the track, and of curves in the track, it is impossible to transfer signals more than twelve or fifteen cars distance and the third brakeman renders very important and valuable service while doing the switching at these and other places in transferring signals; thereby speeding up the work to be done, and in protecting the public on public highways and crossings and street crossings, preventing accidents and damage to persons and property.

Crews termed as through freight crews, on many trips consume from two to three hours switching at intermediate

points, and often this switching is done in cities, over public crossings where traffic is very heavy, and the third brakeman performs a valuble service to the public in preventing accidents by warning the public of the approaching cars and danger.

I here quote Rule No. 103 of the Missouri Pacific Transportation Rules, revised and in effect as of September 1, 1929:

"When cars are pushed by an engine, except when shifting or making up trains in yards, a trainman must take a conspicuous position on the leading car, and when shifting over public crossings at grade, not protected by a watchman or gates, a member of the crew must protect the crossing."

There is now pending negotiation a request to the railroads of the United States by the Four Railroad Brotherhoods that men be furnished sufficient in number to comply with the above operating rules of the railroad companies.

[fol. 140] The brakemen are required by their Rule No. 888, reading as follows:

"Conductors must inspect and require their men to inspect the running gears and brake and draft rigging of trains as often as practicable while on the road, remedy so far as possible any defects, discovered, and remove from the train cars which are unsafe to run. Special attention must be paid to hot journals."

When a long train pulls into a sidetrack, or for some reason stops on the main line, this swing or middle brakeman gives to the public quick service by immediately cutting the public crossing, saving time and inconvenience to the public, and, after opening the passage at the crossing he statiens himself there to direct traffic across with safety, and stopping and warning them when in danger of moving cars or trains; thereby preventing accidents and damage to property.

In Arkansas there is very often heavy and foggy weather which makes the operation of trains very hazardous, and when it becomes necessary to transfer signals in connection with the movement of the train or crews, he stations

himself in the middle of the train and assists in directing the movement by signals to the head brakeman and the engineer, for often the weather and fog is so dense that signals by hand or ordinary lantern cannot be seen except for a very short distance.

Many emergencies arise, such as pulling out of draw bars, cars derailed, and other accidents, requiring the flagman to go back to protect the rear of his train, and this third brakeman assists in the work of chaining up cars, which is done by a very heavy chain that no man can handle, or assists in righting the wrongs of whatever nature they may be; thereby, aiding in getting the train moving again, saving delay to shippers and to the public.

Duties of Men in Performing Service in Compliance with the Full Crew Switch-engine Law

The third man on the switchengines in the cities assists in transferring signals and, because of the heavy auto traffic over street crossings, they are constantly protecting the public from injury, as there is ten fold greater need here [fol. 141] for the Full Crew Laws of Arkansas to-day than when they were passed because of the extremely heavy and daily increasing auto and truck operations over the public crossings in the cities, and the third helper on the switch engines prevents accidents to person and property daily. The enacting clause of the law states the real necessity for such a law as follows: "An Act for the better protection and safety of the public."

The people of Arkansas evidently desire to keep this law, as is evidenced by the failure of the railroad companies in their attempt to have these laws repealed by the Legislature and, after their legislative failure, they submitted the repeal of the laws to a referendum vote of the people, and the people, by their vote in 1926, refused to let the railroads take away their safety laws and protection to the citizenship of Arkansas.

Conclusion

Trains are two and three times longer to-day, and cars four and five times greater in capacity, than they were in the years of 1907 and 1913 when the Full Crew Laws were

passed, and the automobile traffic is ten fold greater; so, by the longer trains, heavier cars, and more and heavier automobile and truck transportation, likewise, there is more of a necessity for the Full Crew Laws of Arkansas, as a protection to the public, than there was when the laws were passed in the years of 1907 and 1913.

Frank Aldrich.

Subscribed and sworn to, before me, this the 11th day of December, 1929. Justine Wilson, Notary Public within and for the City of St. Louis, State of Missouri. My commission expires Dec. 21, 1932. (Seal.)

[fol. 142] IN UNITED STATES DISTRICT COURT

ORDER DISMISSING PETITION—April 28, 1930

This cause coming on for hearing before a statutory court duly composed of the Honorable Kimbrough Stone, Circuit Judge and the Honorable Thomas C. Munger and the Honorable Charles B. Faris, District Judges, the plaintiff presents its application for a temporary injunction and the defendants present their motion to dismiss the petition and cause.

Having fully heard counsel in argument and carefully considered the pleadings, affidavits and briefs and being fully advised, it is ordered that the motion to dismiss is sustained and the petition and the cause dismissed at the costs of the plaintiff.

Dated this 26th day of April, 1930.

Kimbrough Stone, Circuit Judge. C. B. Faris, District Judge. Thos. C. Munger, District Judge.

[fol. 143] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL—Filed May 13, 1930

To the District Court of the United States for the Western District of Arkansas, at Fort Smith; Honorable Charles B. Faris, assigned to act in place of District Judge Youmans:

The Missouri Pacific Railroad Company, the above named plaintiff, conceiving itself aggrieved by the decision of the

Three-Judge Court rendered and entered in the above entitled cause on the 26th day of April, 1930, wherein said court denied the application of plaintiff for a temporary injunction and refused the plaintiff a temporary injunction order restraining the above named defendants, and each of them, from enforcing Sections 8577 and 8579 of Crawford & Moses' Digest of the Statutes of Arkansas for the year 1921, known as the "Arkansas Full Crew Law", and Sections 8583 and 8586 of Crawford & Moses Digest of the Statutes of Arkansas for 1921, known as the "Full Switching Crew Law," governing the operation of freight trains in the State of Arkansas, which decision also sustained the motion of the defendants to dismiss the plaintiff's petition and dismissed the same at the cost of the plaintiff, the said plaintiff does hereby appeal, from said order and decree therein, to the Supreme Court of the United States, for the reasons set forth in the Assignment of Errors filed herewith, and it prays that this appeal be allowed and that citation be issued as provided by law, and that a transcript of the record, proceedings and documents upon which said decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, District of Columbia, under the rules in said court made and provided.

And your petitioner further prays that the proper order, relating to the security to be required of it be made and entered hereon.

Missouri Pacific Railroad Company, by Thos. B. Pryor and Edw. J. White, Its Solicitors.

[fol. 144] In United States District Court

Assignment of Errors—Filed May 13, 1930

The plaintiff in the above cause prays an appeal from the final decree of this court to the Supreme Court of the United States, and assigns for error the action of the Three-Judge Court in this, to-wit:

I

In refusing the temporary injunction and restraining order prayed for by the plaintiff, restraining the defendants

from enforcing the Arkansas Full Train Crew Law (Sections 8577 and 8579, Crawford & Moses' Digest of the Statutes of Arkansas for 1921) and the Arkansas Full Switching Crew Law (Sections 8583 and 8586, Crawford & Moses' Digest of the Statutes of Arkansas for 1921), which statutes of said State, attempting to govern the operation and length of freight tra-ns used in interstate commerce, are clearly inconsistent with the entire comprehensive scheme of federal regulation prescribed by the Interstate Commerce Act, as amended by the Transportation Act of 1920 and by the Railroad Labor Act of 1926.

II

That said Full Train Crew and Full Switching Crew Laws of the State of Arkansas, above referred to, are inconsistent with, and in violation of, paragraphs 10 and 21 of Section I of the Act to Regulate Commerce as amended by the Transportation Act of 1920, known as the "Car Service Sections" of the Interstate Commerce Act.

III

Said Acts of the General Assembly of the State of Arkansas are inconsistent with Sections 13, 15 and 15-a of the Interstate Commerce Act, as amended by the Transportation Act of 1920.

IV

Said Acts of the General Assembly of the State of Arkansas are inconsistent with the spirit and intent of the Federal Railroad Labor Act of 1926.

[fol. 145]

V

Said Acts of the General Assembly of the State of Arkansas are in contravention of the Constitution of the United States, especially in the Interstate Commerce Clause of the Constitution of the United States: Section Eight, Article One of said Constitution.

VI

In holding that the Congress of the United States, by the above statutes, had not occupied the field covered by

these state statutes, above referred to, and delegated to the Interstate Commerce Commission complete and full authority over the subject matter attempted to be covered by these said state statutes.

VII

In holding that the decision of the United States Supreme Court in the cases of

C. R. I. & P. Ry. Co. vs. State of Arkansas, 219 U. S. 453, and
St. L. I. M. & S. Ry. Co. vs. State of Arkansas, 240 U. S. 518,

in view of the subsequent legislation by Congress, above referred to, were conclusive upon said court and prevented it from restraining the enforcement of said statutes of the General Assembly of the State of Arkansas.

VIII

In holding that Congress had not used "fairly clear language" in the amendments to the Transportation Act above referred to, removing from the States the power to prescribe the length of freight trains used in interstate commerce.

IX

In holding that the Congressional legislation above referred to had not "specifically expressed a grant to the Commission of power to control the number of employes to be used by a carrier in the movement of its trains or cars in interstate commerce", when paragraphs 10 and 21 of Section One of the Act to Regulate Commerce, as amended by the Transportation Act of 1920, clearly and explicitly delegate to the Interstate Commerce Commission the power to prescribe "safe and adequate car service", which is expressly defined by paragraph 21 of Section One and paragraph 10 of Section One of the Act to Regulate [fol. 146] Commerce to require and regulate the "safe and adequate supply of trains by any carrier by railroad subject to this Act".

X

In holding that the word "practice" was so vague and indefinite, as thiw term was used in the Transportation Act

of 1920, Sections 13, 15, and 15-a, that the Interstate Commerce Commission had not been fully empowered to stop such practice, required by the General Assembly of the State of Arkansas, above referred to, which resulted in such excessive expenditure of carrier funds without corresponding benefit and, hence, was "a regulation or practice, made or imposed by authority of any State", which was inconsistent with the power delegated by Congress to the Interstate Commerce Commission.

XI

In holding that the revealed purpose of these subdivisions is to prevent "discriminations favorable to intrastate commerce at the expense, and to the detriment, of interstate commerce" only as to rates, when the annual expenditure of $600,000.00, which these laws of the State of Arkansas compel the plaintiff to expend without any corresponding benefit, was clearly the result of "regulations and practices" of a State, inconsistent with the general scheme and object to be attained by the Transportation Act of 1920.

XII

In holding that the words "practice" and "practices", as used in the Transportation Act, "are, when given their broadest permissible meaning, confined to such as are originated by the carrier", when the general scheme and purpose of the Transportation Act were intended to prevent such discriminations against interstate commerce and such wholesale expenditures as those imposed by these Acts of the General Assembly of the State of Arkansas, which are clearly unreasonable and uneconomical and imposed a "practice" in violation of the spirit and intent of the Transportation Act.

[fol. 147]

XIII

In holding that, by the Transportation Act, Congress had not conferred upon the Interstate Commerce Commission "the power to supervise carrier expenditures,—at least, to the extent of preventing waste or improvidence", and "to uphold such power in the Interstate Commerce

Commission would be a decided step in advance of any congressional action."

XIV

In holding that the sections of the Transportation Act above referred to confer upon the Interstate Commerce Commission "no power of directly supervising carrier expenditures", and that said sections of the Transportation Act are "clearly aimed only at voluntary expenditures by the carrier" and do not apply to such unreasonable and extravagant expenditures exacted by individual states, which have a tendency to, and clearly do, break down the national transportation agencies intended to function, as a whole, for the benefit of the public.

XV

In holding that the purpose and intent of the congressional Labor Act of 1926 was only "to prevent interruption of interstate commerce by strikes and lockouts", when the Railroad Labor Act clearly includes a medium and machinery for the peaceful and orderly settlement of disputes involving "conditions of employment" and "working conditions", which are the subject of agreement between the carriers and their employees, which is the whole subject matter of the said Acts of the General Assembly of the State of Arkansas complained of in the plaintiff's bill.

XVI

In concluding that the plaintiff's petition stated no cause of action and, for that reason, dismissing the cause at the cost of the plaintiff.

XVII

In refusing the plaintiff a temporary injunction to prevent the enforcement of the illegal statutes complained of [fol. 148] in the plaintiff's bill.

Wherefore the said plaintiff prays that said errors, so assigned, may be corrected and for a reversal of the decree

of the three judge court sitting in said cause for the United States District Court for the Western District of Arkansas, in the above entitled cause.

Thos. B. Pryor and Edw. J. White, Solicitors for Plaintiff.

[fol. 149] In United States District Court

Order Allowing Appeal—May 13, 1930

The appellant in the above entitled suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the decree made and entered in the above entitled case by the District Court of the United States for the Western District of Arkansas on the 26th day of April, 1930, refusing the plaintiff an injunction and dismissing the plaintiff's petition, and said appellant having presented and filed its petition for appeal, assignment of errors, and prayed for a reversal, pursuant to the statutes and rules of the Supreme Court of the United States made and provided;

It is now here ordered that an appeal be, and the same is hereby allowed to the Supreme Court of the United States from the District Court of the United States for the Western District of Arkansas in this cause, as provided by law; and

It is further ordered that the clerk of the court appealed from shall prepare and certify a transcript of the record, proceedings and decree in this cause, and transmit the same to the Supreme Court of the United States, so that he shall have the same in said court within — days from this date; and

It is further ordered that security for costs on appeal be fixed in the sum of One Thousand Dollars.

Dated May 13th, 1930.

C. B. Faris, Acting District Judge of the United States District Court for the Western District of Arkansas. Kimbrough Stone, Circuit Judge for the Eighth Judicial Circuit. Thos. C. Munger, District Judge for the State of Nebraska, Acting as a Member of the Three Judge Court, sitting in the Above-entitled Cause.

[fols. 150-153] Bond on appeal for $1,000.00, approved May 13, 1930, and filed May 19, 1930, omitted in printing.

[fol. 154] IN UNITED STATES DISTRICT COURT

Before Stone, Circuit Judge, and Munger and Faris, District Judges

MEMORANDUM OPINION—Filed April 28, 1930

Per CURIAM:

This is a bill seeking to enjoin the Attorney General of the State of Arkansas and the prosecuting attorneys of the Twelfth and Thirteenth Judicial Circuits of that State from prosecuting plaintiff for violation of the "full crew" train (Sections 8577-8579 Crawford & Moses Digest of the Statutes of Arkansas, for 1921) and switching (Sections 8583-8586 of the above Digest) statutes of that State governing operation of freight trains. The bill alleges that these statutes are violative of the Fourteenth Amendment to the Constitution and of the Interstate Commerce Act, as amended by the Transportation Act of 1920.

Defendants have filed a motion to dismiss upon various grounds. To avoid possible further argument and by leave of court, defendants deposited an answer which was to be filed and acted upon in case the court should deny the motion to dismiss. This procedure was agreeable to all parties. Affidavits have been filed. The court has heard argument and briefs have been submitted.

We first consider the motion to dismiss. The first ground of this motion is that this is a suit against a state. This contention is answered by a long line of decisions among which are the following: Old Colony Trust Co. v. Seattle, 271 U. S. 426, 430; Greene v. L. & I. R. R. Co. 244 [fol. 155] U. S. 499, 506; Harrison v. Railroad, 232 U. S. 318, 332; Hopkins v. Clemson Agr. College, 221 U. S. 636, 642; Ex parte Young, 209 U. S. 123, 149; Prout v. Starr, 188 U. S. 537, 543.

The second ground of the motion is that this action is not allowable since it seeks to enjoin the enforcement of criminal statutes and that the bill shows plaintiff has not

availed itself of the "full and complete remedy that it has under the laws of the State governing practice and procedure in its the State's courts". The bill alleges that certain prosecutions have taken place, others are in course and yet other- threatened. Obviously, a property right of plaintiff is involved in the enforcement of these statutes. Where such is the case and where a multiplicity of such prosecutions are involved, a court of equity may intervene even though the effect is to enjoin the enforcement of criminal laws (Yu Cong Eng v. Trinidad, 271 U. S. 500, 507; Traux v. Raich, 239 U. S. 33, 37).

The third ground is that no appeal was taken from the prosecutions which have gone to judgment and that plaintiff should have availed itself of an appeal from the justice of the peace (before whom the judgments were entered) to the State Circuit Court, thence to the State Supreme Court and thence, by writ of error, to the United States Supreme Court. If the violations covered by such judgments were all that were involved in this proceeding, there would be much force in the above suggestion. But where the statutes provide (as here) that "each freight train" so run and each switching "crew" so operated shall be a separate offense, and where the purpose of the bill is to prevent all prosecutions in the future, the inadequacy of the above procedure is evident. While the tedious journey of appeal through three consecutive courts is being travelled, the plaintiff is compelled to submit to the statutes and undergo losses it can never recover.

The remaining grounds of the motion go to the sufficiency of the bill to state a cause for relief and may be treated together. The first ground for relief alleged in the bill is a violation of the Fourteenth Amendment. De-
[fol. 156] fendants' claim as to this is advanced in the motion to dismiss and is that the validity of these two statutes has been sustained. That position is well taken. This statute as to the full train crew was before the Supreme Court of Arkansas (Chicago, Rock Island & Pac. Ry. Co. v. State, 86 Ark. 412) and passed, by writ of error, to the Supreme Court of the United States (219 U. S. 453). Its validity was sustained in both courts. This full switching crew statute was before the State court (St. L. I. M. & S. Ry. Co. v. State, 114 Ark. 486) and passed,

by writ of error, to the Supreme Court of the United States (240 U. S. 518), being sustained in both courts.

The second ground of the bill is that Congress has occupied this field since the above decisions (the latest being in 1916). In the train crew decision (219 U. S. 453, at 466), the court said:

"Undoubtedly, Congress in its discretion, may take entire charge of the whole subject of the equipment of interstate cars, and establish such regulations as are necessary and proper for the protection of those engaged in interstate commerce. But it has not done so in respect of the number of employes to whom may be committed the actual management of interstate trains of any kind. It has not established any regulations on that subject, and until it does the statutes of the State, not in their nature arbitrary, and which really relate to the rights and duties of all within the jurisdiction, must control."

Therefore, the question here is not as to the power of Congress, exclusively to occupy the field covered by these State statutes but it is whether it has, in fact, done so. The bill alleges that such statutes "would defeat the general and comprehensive scheme of Federal regulation prescribed by (a) the Interstate Commerce Act, as amended by the Transportation Act of 1920, and (b) by the Railroad Labor Act of 1926". The bill then proceeds to particularize, as follows:

"XI

Conflict with Interstate Commerce Act, as Amended

Section 13 of the Act to Regulate Commerce, as amended February 28, 1920, gives the Interstate Commerce Commission complete jurisdiction to prescribe 'the rate, fare, charge, classification, regulation, or practice,' which must be adopted and put into effect by interstate carriers, and the Interstate Commerce Commission is given authority by Congress, after hearing, to fix and determine 'any such rate, fare, charge, classification, regulation, or practice which may cause an undue or unreasonable advantage, preference or prejudice as between persons or localities in intrastate commerce, on the one hand, and interstate

or foreign commerce on the other hand, or any undue, unreasonable or unjust discrimination against interstate or foreign commerce, and to prescribe the rate, fare, charge, classification, regulation, or practice thereafter to be observed in such manner as, in its judgment, will remove [fol. 157] such advantage, prefference, prejudice, or discrimination, * * * the law of any state or the decision or order of any state authority to the contrary notwithstanding.'

This section of the Transportation Act, which was not in existence when the constitutionality of the Arkansas Full Switching Law and Extra Brakeman Act were passed upon by the Supreme Court of the United States, clearly shows that Congress, since those decisions, has occupied the field, thus nullifying the state power upon this subject.

By Section 15 of the Act to Regulate Commerce, as amended February 28, 1920, the Interstate Commerce Commission is given complete authority to determine rates, classifications, regulations and practices, and the Commission is given authority to prescribe what will be 'a just and reasonable rate, fare, charge, thereafter to be observed,' and what 'individual or joint classification, regulation or practice is or will be just, fair and reasonable to be thereafter followed, and to make an order that the carrier or carriers shall cease and desist from such violation to the extent to which the Commission finds that the same does or will exist * * * and the carriers shall adopt the classification and shall conform to and observe the regulation or practice so prescribed.'

The Interstate Commerce Commission, by section 15, paragraph 6, in prescribing the rates and practices to be followed by interstate carriers, is directed by Congress as follows:

'In so prescribing and determining the divisions of joint rates, fares and charges, the Commission shall give due consideration, among other things, to the efficiency with which the carriers concerned are operating, the amount of revenue required to pay their respective operating expenses, taxes, and a fair return on their railway property held for and used in the service of transportation, and the importance to the public of the transportation services of such carriers, and also whether any particular par-

ticipating carrier is an originating, intermediate or delivering line, and any other fact or circumstance which would ordinarily, without regard to the mileage haul, entitle one carrier to a greater or less proportion than another carrier to the joint rate, fare or charge.'

Section 15 (a), paragraph 2, further provides as follows:

'In the exercise of its power to prescribe just and reasonable rates the Commission shall initiate, modify, establish or adjust such rates so that carriers as a whole, or as a whole in each of such rate groups, will, under honest, efficient and economical management and reasonable expenditures for maintenance of way, structure and equipment, earn and aggregate net annual operating income equal, as nearly as may be, to a fair return upon the aggregate value of the railway property,' etc.

By these sections the Commission is given authority, not only to fix the rates so as to provide a reasonable return upon the property, but also to regulate the expenditures consistent with proper, efficient operation and economical management. If the Interstate Commerce Commission has authority to prescribe the rates and to regulate the expenditures, then the State of Arkansas, or any other individual state, cannot uselessly require, under the guise of the police power, an annual expenditure by the carriers of this state of the sum of $1,000,000.00, which is not required by any other of the eight states through which the petitioner operates, for compliance with the so-called Full Crew Laws.

XII

Conflict with Railroad Labor Act

Congress has also legislated upon the complete subject of railway labor by providing for a board of mediation and an emergency board, if necessary, to consider and act upon all disputes and issues between railroad employees and the common carriers of this country that they do not settle themselves.

[fol. 158] The Railroad Labor Act of 1926 provides that it shall be the duty of all carriers, their officers, agents

and employees; to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules and working conditions, and to settle all disputes. Conferences are provided for 'in case of a dispute between a carrier and its employes arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules or working conditions.'

Congress, by the Railroad Labor Act, has given the United States Board of Mediation jurisdiction to consider and act upon any and all disputes, and not only to consider reasonable rules and working conditions, but also, when arbitration is had, the decision of the arbitrators as to proper 'working conditions' between railroad employees and common carriers is binding between both parties.

Plaintiff avers that by said Railroad Labor Act Congress intended to leave the railroad common carriers of the United States and their employees free to handle questions pertaining to rules and working conditions, as in said Railroad Labor Act provided, and intended that if they agreed to arbitrate under said act any controversies or disputes with respect to rules and working conditions, the judgment of the Arbitrators should not be limited in any way other than by federal statutes, and intended that any judgments on awards entered pursuant to provisions of said act should not be affected or disturbed in any way by any state statute or any order of any state administrative body theretofore or thereafter passed or entered. The Arkansas Extra Switchman Act and Extra Brakeman Law is therefore void because in conflict and inconsistent with the said United States Railroad Labor Act of 1926."

The rule seems to require clear language to accomplish the results here sought, for it is said in Napier v. Atlantic Coast Line R. R. Co. 272 U. S. 605, 611, "The intention of Congress to exclude States from exerting their police power must be clearly manifested, Reid v. Colorado, 187 U. S. 137, 148; Savage v. Jones, 225 U. S. 501, 533." In the light of this rule, do the several matters included in the above contentions of plaintiff, or any one of them, make clearly manifest any intention of Congress to abrogate the power of a sovereign state to exercise its police power in the matter of requiring extra brakemen and extra switchmen?

The Transportation Act of 1920 (41 Stat. 456) "introduced into the federal legislation a new railroad policy" (New England Divisions Case, 261 U. S. 184, 189; R. R. Comm. v. C. B. & Q. R. R. Co. 257 U. S. 563, 585.) The purpose of this policy is repeatedly expressed in the Act (Sections 402, 407, 422), and may be stated in the language used in section 402 as being to 'best promote the service in the interest of the public and the commerce of the people.' An important feature of the means to accomplish [fol. 159] such purpose was 'affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country' (Dayton-Goose Creek Ry. Co. v. U. S. 263 U. S. 458, 478) so as 'to insure * * * adequate transportation service' (New England Divisions Case. 261 U. S. 184, 189)" M. K. & T. R. Co. v. Northern Okla. Rys. 25 Fed. (2d) 689, 690, this court.

While the Act declared this ambitious purpose and the construing decisions have recognized and striven to give full effect thereto, yet the Act did not grant any "blanket" authority to the Commission to effectuate such purpose. On the contrary, Congress specified the character of matters committed to the Commission. It appeared, in the argument, that a respectable number of the States had (and yet have) legislation directly upon the matters here involved and the validity of such legislation had been established (C. R. I. & P. R. R. Co. v. Arkansas, 219 U. S. 453; St. L. I. & S. R. R. Co. v. Arkansas, 240 U. S. 518) at the time this Act was under consideration by Congress. We should, therefore, expect that Congress would use fairly clear language if it intended to take that field away from the states. Nowhere in that Act is there a specifically expressed grant to the Commission of power to control the number of employees to be used by a carrier in the movement of its trains or cars in interstate commerce. If such a grant is in the Act, it must be construed to lie within some more general expressions. Plaintiff points out such expressions which it contends should be so construed. Those are found in that part of the Act which amended the then existing Interstate Commerce Act (as amended).

One expression relied upon is the word "practice". This word, standing alone, is vague. It has been defined as "Frequent and repeated exercise in any matter" (Stand-

ard Dictionary). Its outline becomes definite only when associated with other definite ideas. Even as associated with the jurisdiction of the Interstate Commerce Commission, as expressed in the Act to Regulate Commerce as amended in 1910, the Supreme Court has said of the word, "Regarding only its broad generality anything may be asserted of it" (U. S. v. Penn. R. R. Co. 242 U. S. 208, 228) [fol. 160] and "considered generally and without regard to context, is not capable of useful construction. If broadly used, it would cover everything carriers are accustomed to do" (B. & O. R. R. Co. v. U. S. 227 U. S. 291, 299). Mr. Justice Butler then declares the rule, for construing this word when used in the Commerce Act, to be that "Congress will be deemed to have intended to confine its application to acts or things belonging to the same general class as those meant by the words associated with it" (B. & O. R. R. Co. v. U. S. 277 U. S. 291, 300).

As originally enacted the Interstate Commerce Act (Act to Regulate Commerce, Feb. 4, 1887, 24 Stat. 379) did not contain the words "Practice" or "practices." Prior to the Transportation Act of 1920, those words came in, by amendments to that Act, only in sections 1 and 15. Section 15 was so amended by the Acts of June 29, 1906 (34 Stat. 584, 589) and of June 18, 1910 (36 Stat. 539, 545) and of May 29, 1917 (40 Stat. 101). In the Transportation Act the expression appears in amendments to section 1 (41 Stat. 456 at 475 and 476), to section 13 (41 Stat. 456 to 484), to section 15 (41 Stat. 456, at 485, 486, and 487) and in the new section 15 a. (41 Stat. 456 at 488.)

Plaintiff mainly relies upon the use of the expression in sections 13, 15 and 15a of the Transportation Act although the use in Section 1 was adverted to in argument. We will take the sections up in the order: 13, 15, 15a and 1.

Section 13 deals with complaints to and investigations by the Commission. Up to the Transportation Act, it consisted of two unnumbered subdivisions. The Transportation Act (41 Stat. 456, 484) gave those subdivisions numbers (1) and (2) and added thereto two new subdivisions (3) and (4). Before the Transportation Act, there had been but one Act (June 18, 1910, 36 Stat. 539, 550) amending this section. The amendment of 1910 was confined to adding "any common carrier" as a complainant and to clarify-

ing the statement as to the right and powers of the Com- [fol. 161] mission to initiate investigations. The expressions theretofore used are the same now found in subdivisions (1) and (2), wherein the Commission is empowered to determine complaints "of anything done or omitted to be done by any common carrier subject to the provisions of this Act in contravention of the provisions thereof" or to initiate investigations "as to any matter or thing concerning which a complaint is authorized to be made, to or before said commission by any provision of this Act, or concerning which any question may arise under any of the provisions of this Act, or relating to the enforcement of any of the provisions of this Act" (36 Stat. 539, 550-551). The word "practice" did not appear in the section prior to the Transportation Act and, therein, only in subdivisions (3) and (4) which were new in that Act. Those two new subdivisions (italics ours) are as follows (41 Stat. 484):

"(3) Whenever in any investigation under the provisions of this Act, or in any investigation instituted upon petition of the carrier concerned, which petition is hereby authorized to be filed, there shall be brought in issue any rate, fare, charge, classification, regulation, or *practice*, made or imposed by authority of any State, or initiated by the President during the period of Federal control, the Commission, before proceeding to hear and dispose of such issue, shall cause the State or States interested to be notified of the proceeding. The Commission may confer with the authorities of any State having regulatory jurisdiction over the class of persons and corporations subject to this Act with respect to the relationship between rate structures and *practices* of carriers subject to the jurisdiction of such state bodies and of the Commission; and to that end is authorized and empowered, under rules to be prescribed by it, and which may be modified from time to time, to hold joint hearings with any such state regulating bodies on any matters wherein the Commission is empowered to act and where the rate making authority of a State is or may be affected by the action taken by the Commission. The Commission is also authorized to avail itself of the cooperation, services, records, and facili-

ties of such State authorities in the enforcement of any provision of this Act.

(4) Whenever in any such investigation the Commission, after full hearing, finds that any such rate, fare, charge, classification, regulation, or *practice* causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce, which is hereby forbidden and declared to be unlawful, it shall prescribe the rate, fare, or charge, or the maximum or minimum, or maximum and minimum, thereafter to be charged, and the classification, regulation, or *practice* thereafter to be observed, in such manner as, in its judgment, will remove such advantage, preference, prejudice, or discrimination. Such rates, fares, charges, classifications, regulations, and *practices* shall be observed while in effect by the carriers parties to such proceeding affected thereby, the law of any state or the decision or order of any state authority to the contrary notwithstanding."

[fol. 162] The scope and purposes of these two subdivisions are revealed in the expressions used therein. They are parts of one legislative idea which is to declare unlawful "any rate, fare, charge, classification, regulation or practice, made or imposed by authority of any state, or initiated by the President during the period of Federal control" (subdivision (3) which "causes any undue or unreasonable advantage, preference, or prejudice as between persons or localities in intrastate commerce on the one hand and interstate or foreign commerce on the other hand, or any undue, unreasonable, or unjust discrimination against interstate or foreign commerce" (subdivision (4)); and to provide the method of enforcing that prohibition. That method is to lodge jurisdiction in the Commission to make such investigations and orders thereon, which orders shall be controlling. As a matter of comity and fairness, the Commission is required to notify the State affected so that it may be represented at the hearing. As a matter of comity and possible aid to the Commission, it is empowered to confer with and hold joint meetings

with the proper state authorities and to avail itself of the information, etc., of such authorities. Subdivision (4) is really the main one of the two subdivisions, while (3) is largely, if not entirely, procedural. The revealed purpose of these subdivisions is to prevent discriminations favorable to intrastate commerce at the expense and to the detriment of interstate commerce. Such discriminations had arisen before the Transportation Act and had been condemned by the Supreme Court in the "Shreveport Case" (Houston and Texas Ry. Co. v. U. S. 234 U. S. 342) and the Minnesota Rate Cases, 230 U. S. 352. It was to enact in to statutory law and affirm the jurisdiction of the Commission in such matters that these two subdivisions were inserted in the Transportation Act. The matters treated in the above cases were intrastate rates fixed by State authority. The main purpose Congress had in mind was rates or matters affecting rates—classifications, rules, regulations, practices. This is clearly revealed in the report of the Committee to the House of Representatives (66th Cong. H. R. Report 456) where, in discussing this feature of the bill, it was said:

[Vol. 163] "Adjusting Conflicts Between Inter and Intra State Rates

Whenever, in any investigation under the provisions of the Commerce Act, or in any investigation instituted upon petition of the carrier concerned, there shall be brought in issue any rate, fare, charge, classification, regulation, or practice made or imposed by authority of any State, the commission (Sec. 445) before proceeding to hear and dispose of such issue shall cause such state or states to be notified of the proceeding. The commission can ask the State regulatory body to 'sit in' with it and hold joint hearings and to avail itself of the cooperation, services, records, and facilities of such State authorities. After such hearing the Commission shall make such findings and orders as may in its judgment tend to remove any undue advantage, preference or prejudice as between persons or localities in State and interstate or foreign commerce. The provision practically enacts into law the decision of the Supreme Court in the so-called 'Shreveport' case. Any

undue burden upon interstate or foreign commerce is forbidden and declared to be unlawful. It is believed that the provisions of this section will have a beneficial and harmonizing effect and will tend to reduce the number of so-called 'Shreveport' cases, while at the same time recognizing the regulatory bodies of the several states." H. Rep. 456 p. 20.

"Control of Commission over intrastate rates.—Section 415 (416) amends section 13 of the commerce act in such a manner as to require the commission when considering the relation between the intrastate rate and the interstate rate to give notice to the state affected. The commission is authorized to confer with the proper State regulatory body and to hold joint hearings. The commission is given power, after full hearing, to make such orders as may in its judgment tend to remove any undue advantage, prejudice, or preference as between persons or localities in State, interstate, or foreign commerce, respectively, or any undue burden upon interstate or foreign commerce." H. Rep. 456, p. 29.

Also see statement of Senator Cummins in explanation of the bill (59 Cong. Rec. 142-143). It may be that the words "regulation, or practice" should not be narrowly confined to such as are directly related to rates but it is certain that Congress had no thought of including matters such as are involved in this action. This is true for two reasons. First, such words are used in connection with others—"rate, fare, charge, classification"—which refer exclusively to rates and, therefore, are to be construed in that connection (B. & O. R. R. Co. v. U. S. 277 U. S. 291, 299, 300). Second, these subdivisions of the section refer only to practices which tend unduly to discriminate in favor of intrastate commerce and against interstate and foreign commerce—here, all commerce is equally affected and in the same manner by these state statutes.

[fol. 164] Plaintiff relies upon the same expression as used in section 15 as amended by section 418 of the Transportation Act (41 Stat. 456, 484-488). That expression first came into this section by the amendment of June 29, 1906 (34 Stat. 584, 589) and further by the amendment of June 18, 1910 (36 Stat. 539, 551). As originally enacted

(24 Stat. 379, 384), this section was a single paragraph and provided for a "cease and desist" or "reparation" order by the Commission. The power there given was one of negation as to "anything * * * done or omitted to be done (by the carrier) in violation of the provisions of this act, or of any law cognizable by said Commission." Besides broadening the power of the Commission in respects not here material, the Act of 1906 amended the existing paragraph of the Act to Regulate Commerce. Instead of the above quoted general language ("anything * * * done or omitted to be done," etc.) the amendment substituted "any of the rates or charges whatsoever, demanded, charged, or collected * * * or any regulations or practices whatsoever of such carrier or carriers affecting such rates * * *"; and gave the Commission power to act affirmatively by determining and prescribing a just rate "and what regulation or practice in respect to such transportation is just, fair, and reasonable to be thereafter followed." The above is the first appearance of the words "practice" or "practices" in the Interstate Commerce (Act to Regulate Commerce) Act. Obviously, it relates only to voluntary practices by the carrier which improperly affect rates. The amendment of 1910 did not depart from this meaning of the words "practice" or "practices" as used in the section. It speaks of rates and of "classifications, regulations, or practices" which are found to be unjust or unreasonable or unjustly discriminatory or undul, preferential or prejudicial or otherwise in violation of any of the provisions of this Act" (36 Stat. at 551). In the next paragraph (new in the amendment) relating to filing of tarrif-s, etc., the meaning of the words is emphasized. That paragraph starts with "Whenever there shall be filed with the commission any schedule stating a new individual or joint rate, fare, or charge, or any [fol. 165] new individual or joint regulation or practice affecting any rate, fare, or charge" and thereafter uses the word "practice" six times in the same connection. The position of these two paragraphs would seem to indicate that the words were intended to be used in both in reference only to rates. However, the use in the first paragraph, considered alone, is rather broad and the expressions in the report of the Committee to the House of Rep-

resentatives (H. R. Report 923 pp. 10 82-84, 61st Cong. 2nd Sess.) indicate a wider meaning. But even the committee report does not carry the meaning beyond "practices" originated by the carriers. The amendments to this section by the Transportation Act (41 Stat. 456 at 484-488), obviously, do not broaden the meaning of the words as they existed in the section before those amendments.

The word "practices" occurs once in section 15a (41 Stat. 456, 488), which is a new section added by the Transportation Act. The use there occurs in a definition of "rates"; is expressly limited to practices "relating" to "rates, fares, and charges" and plainly, refers only to such as are originated by the carriers.

Counsel, in argument, call attention to the same words in amendments to Section 1 made by the Transportation Act (41 Stat. 456, at 475-476). The amendment there refers to two separate matters. The first occurs in section 400 of the Transportation Act (41 Stat. at 475) and clearly is confined to such as are originated by the carrier in connection with "the safe and prompt receipt, handling, transportation, and delivery of property subject to the provisions of this Act." The second occurs in section 402 of the Transportation Act and refers solely to "car service."

The conclusion is that the words "practice" or "practices," as used in the Transportation Act, are, when given their broadest permissible meaning, confined to such as are originated by the carrier or such as result in discrimination in favor of intrastate commerce as against interstate or foreign commerce.

Counsel rely, also, upon a provision in the new section, 15a, added by the Transportation Act. This is the "recapture of earnings" section. Subdivision (3) thereof, dealing with the determination by the Commission of the rate of return on value, requires consideration to be given "to [fol. 166] the transportation needs of the country and the necessity (under honest, efficient and economical management of existing facilities) of enlarging such facilities in order to provide * * adequate transportation." The provision stressed here is "economical management." The argument is that the Arkansas statutes require unnecessary and, therefore, wasteful expenditures; that the above provision gives the Commission the power to confine man-

agement to "economical" measures and, therefore, Congress has occupied the field of controlling matters interfering with such economical management. The logical result of this contention, as to grant of power to the Commission, is that Congress conferred the power to supervise carrier expenditures—at least, to the extent of preventing waste or improvidence. The power to do this directly would be a decided step in advance of any congressional action before the Transportation Act. This subdivision of this section deals with just one main subject. That subject is the rate of return on property value to be determined and allowed the carriers by the Commission. As an element in such determination, the transportation needs of the country are to be considered by the Commission. The expression relied upon here occurs only in connection with the consideration of "the necessity * * * of enlarging such (transportation) facilities." In that connection, the Commission is to consider the honesty, efficiency and economy "of existing transportation facilities." Such provision gives no power of directly supervising carrier expenditures. It provides control only through the rate of return allowed by the Commission. Also, it clearly is aimed only at voluntary expenditures by the carrier.

Counsel rely upon certain expressions by Senators Cummins (Cong. Rec. 59, p. 396) and Robinson (same pp. 3331, 3332 and 3334) as sustaining their view. Other expressions show, more clearly, the thought to be that if a carrier, having large net earnings and knowing it could, under [fol. 167] section 15a, retain only a part thereof, should seek to use such exress earnings in exhorbitant wages or other wasteful expenditures, the Commission might make such action inadvisable by considering such in estimating the proper excess earnings to be turned over to the Government as trustee—in short, such could be thrown back on the corporation to the loss of its stockholders. There is no suggestion in the section as enacted, in the committee reports or in the congressional debates of any direct control by the Commission of any expenditures of the carriers and indirect control is suggested only as to such expenditures as are voluntarily made by the carrier.

Labor Act of 1926

Plaintiff contends that Congress has occupied the field of these Arkansas statutes in the Labor Act of 1926 (44 Stat. 577). It is argued that Congress, in that Act, took over control of "working conditions" of employees of interstate carriers and that "working conditions", as there used, includes the number of men required in train and switching crews. In a sense, the number of men required to perform a task is one of the "working conditions" of that task. However, such meaning is not necessarily included in such expression. Therefore, it is necessary to construe this Act to determine if such meaning is to be found therein. This Act is the latest of a line of congressional legislation having the same general purpose. Prior Acts are the Acts of June 1, 1898 (30 Stat. 424) of July 15, 1913 (38 Stat. 103) and the Transportation Act of 1920 (41 Stat. 456, 469). The purpose of each of these Acts was to prevent interruption of interstate commerce by strikes or lock outs resulting from disputes between carriers and their employees. The general method of each of these Acts is to provide a medium or machinery for peaceful, orderly settlement of such disputes. In each the subject matter of dispute is defined in general terms—these terms are similar in all of the Acts. The Acts of 1898 (30 Stat. 424, 425) and of 1913 (38 Stat. 103, 104) include in such definition "conditions of employment." The Transportation Act (41 Stat. 456, 470, 471) includes [fols. 168 & 169] "working conditions" and "standards of working conditions." The Labor Act of 1926 (44 Stat. 577, 578, 580, 582) includes "working conditions." Obviously, these terms in each of these Acts have the same general meaning. They mean such conditions affecting the work of the empolyees as might be the subject of agreement between the carriers and the employees. This could not include matters of statutory duty for such are withdrawn from the volition of either party. Also, if Congress intended to occupy the field in the Labor Act of 1926, it had already, by the use of similar language, done so in 1898, yet the Supreme Court, in 1911 (219 U. S. 453) and 1916 (240 U. S. 518) decided these very statutes of Arkansas were in a field not occupied by national legislation.

Conclusion

Our conclusion is that the petition states no cause of action and, for that reason, the motion to dismiss should be sustained and the cause dismissed, and it is so ordered.

[fol. 170] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF THE POINTS ON WHICH APPELLANT WILL RELY AND OF THE PARTS OF RECORD WHICH APPELLANT THINKS NECESSARY FOR THE CONSIDERATION THEREOF—Filed June 17, 1930.

Comes the Missouri Pacific Railroad Company, appellant herein, and in compliance with Paragraph 9 of Rule 11 of this Court submits the following statement of the points on which the appellant will rely on the hearing of the appeal of this cause, to-wit:

I

That the court erred in refusing the temporary injunction and restraining order prayed for by the plaintiff, restraining the defendants from enforcing the Arkansas Full Train Crew Law (Sections 8577 and 8579, Crawford & Moses' Digest of the Statutes of Arkansas for 1921) and the Arkansas Full Switching Crew Law (Sections 8583 and 8586, Crawford & Moses' Digest of the Statutes of Arkansas for 1921), which statutes of said State, attempting to govern the operation and length of freight trains used in interstate commerce, are clearly inconsistent with the entire comprehensive scheme of federal regulation prescribed by the Interstate Commerce Act, as amended by the Transpor-
[fol. 171] tation Act of 1920 and by the Railroad Labor Act of 1926.

II

That said Full Train Crew and Full Switching Crew Laws of the State of Arkansas, above referred to, are inconsistent with, and in violation of, paragraphs 10 and 21 of Section I of the Act to Regulate Commerce as amended by the Transportation Act of 1920, known as the "Car Service Sections" of the Interstate Commerce Act.

III

Said Acts of the General Assembly of the State of Arkansas are inconsistent with Sections 13, 15 and 15-a of the Interstate Commerce Act, as amended by the Transportation Act of 1920.

IV

Said Acts of the General Assembly of the State of Arkansas are inconsistent with the spirit and intent of the Federal Railroad Labor Act of 1926.

V

Said Acts of the General Assembly of the State of Arkansas are in contravention of the Constitution of the United States, especially of the Interstate Commerce Clause of the Constitution of the United States: Section Eight, Article One of said Constitution.

VI

That the court erred in holding that the Congress of the United States, by the above statutes, had not occupied the field covered by these State statutes, above referred to, and delegated to the Interstate Commerce Commission complete and full authority over the subject matter attempted to be covered by these said State statutes.

VII

That the court erred in holding that the decisions of the United States Supreme Court in the cases of

C. R. I. & P. Ry. Co. v. State of Arkansas, 219 U. S. 453, and

St. L., I. M. & S. Ry. Co. v. State of Arkansas, 240 U. S. 518,

in view of the subsequent legislation by Congress, above [fol. 172] referred to, were conclusive upon said Court and prevented it from restraining the enforcement of said Statutes of the General Assembly of the State of Arkansas.

VIII

That the courts erred in holding that Congress had not used "fairly clear language" in the amendments to the Transportation Act above referred to, removing from the states the power to prescribe the length of freight trains used in interstate commerce.

IX

That the court erred in holding that the Congressional legislation above referred to had not "specifically expressed a grant to the Commission of power to control the number of employees to be used by a carrier in the movement of its trains or cars in interstate commerce," when paragraphs 10 and 21 of Section One of the Act to Regulate Commerce, as amended by the Transportation Act of 1920, clearly and explicity delegate to the Interstate Commerce Commission the power to prescribe "safe and adequate car service," which is expressly defined by paragraph 21 of Section One and paragraph 10 of Section One of the Act to Regulate Commerce to require and regulate the "safe and adequate supply of trains by any carrier by railroad subject to this Act."

X

That the court erred in holding that the word "practice" was so vague and indefinite, as this term was used in the Transportation Act of 1920, Sections 13, 15 and 15-a, that the Interstate Commerce Commission had not been fully empowered to stop such practice, required by the General Assembly of the State of Arkansas, above referred to, which resulted in such excessive expenditure of carrier funds without corresponding benefit and, hence, was "a regulation or practice," made or imposed by authority of any State, which was inconsistent with the power delegated [fol. 173] by Congress to the Interstate Commerce Commission.

XI

That the court erred in holding that the revealed purpose of these subdivisions is to prevent "discriminations favorable to intrastate commerce at the expense, and to the detri-

ment, of interstate commerce" only as to rates, when the annual expenditure of $600,000.00, which these laws of the State of Arkansas compel the plaintiff to expend without any corresponding benefit, was clearly the result of "regulations and practices of a State, inconsistent with the general scheme and object sought to be attained by the Transportation Act of 1920.

XII

That the court erred in holding that the words "practice" and "practices", as used in the Transportation Act, "are, when given their broadest permissible meaning, confined to such as are originated by the carrier," when the general scheme and purpose of the Transportation Act were intended to prevent such discriminations against interstate commerce and such wholesale expenditures as those imposed by these Acts of the General Assembly of the State of Arkansas, which are clearly unreasonable and uneconomical, and imposed a "practice" in violation of the spirit and intent of the Transportation Act.

XIII

That the court erred in holding that, by the Transportation Act, Congress had not conferred upon the Interstate Commerce Commission "the power to supervise carrier expenditures,—at least, to the extent of preventing waste or improvidence," and, "to uphold such power in the Interstate Commerce Commission would be a decided step in advance of any congressional action."

XIV

That the court erred in holding that the sections of the Transportation Act above referred to confer upon the In-[fol. 174] terstate Commerce Commission "no power of directly supervising carrier expenditures," and that said sections of the Transportation Act are "clearly aimed only at voluntary expenditures by the carrier" and do not apply to such unreasonable and extravagant expenditures exacted by individual States, which have a tendency to, and clearly do, break down the national transportation agencies intended to function, as a whole, for the benefit of the public.

XV

That the court erred in holding that the purpose and intent of the congressional Labor Act of 1926 was only "to prevent interruption of interstate commerce by strikes and lockouts," when the Railroad Labor Act clearly includes a medium and machinery for the peaceful and orderly settlement of disputes involving "conditions of employment" and "working conditions," which are the subject of agreement between the carriers and their employees, which is the whole subject matter of the said Acts of the General Assembly of the State of Arkansas complained of in the plaintiff's bill.

XVI

That the court erred in concluding that the plaintiff's petition stated no cause of action and, for that reason, dismissing the cause at the cost of the plaintiff.

XVII

That the court erred in refusing the plaintiff a temporary injunction to prevent the enforcement of the illegal statutes complained of in the plaintiff's bill.

Designation of the Parts of Record to be Printed

I

The bill of complaint and affidavits of J. H. Amos, L. W. Baldwin, W. E. Brooks, J. Cannon, M. T. Fulton, H. P. Galbreath, O. A. Garber, E. A. Hadley, E. H. Holden, Jas. E. Hutchinson, F. P. Johnson, W. G. Koch, C. F. Larson, and [fols. 175 & 176] D. O. Ouellet, in support thereof.

II

The motion to dismiss and the affidavit of Frank Aldrich in support thereof.

III

The order of the Court dismissing the bill of complaint, and the opinion of the Court.

IV

Petition for appeal and the appeal bond.

V

The assignment of errors.

VI

The order granting the appeal and the citation with waiver of service endorsed thereon.

Respectfully submitted.

Edward J. White, Thomas R. Pryor, Solicitors for Appellant.

Receipt of copy of the above and foregoing statement of points upon which appellant will rely and designation of parts of record to be printed is hereby admitted and service thereof waived this 11th day of June, 1930.

Hal L. Norwood, Attorney General of Arkansas. Chester Holland, Prosecuting Attorney. Twelfth Judicial District. —— ——, Prosecuting Attorney, Thirteenth Judicial District.

[fol. 177] [File endorsement omitted.]

Endorsed on cover: File No. 35,115. W. Arkansas D. C. U. S. Term No. 193. Missouri Pacific Railroad Company, appellant, vs. Hal Norwood, Attorney General of the State of Arkansas; Joe, Joiner, Prosecuting Attorney for the Thirteenth Circuit of Arkansas, et al., etc. Filed June 9, 1930. File No. 35,115.